# SUPREME COURT OF THE UNITED STATES.

No. 49.

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LEVI MORRELL, Pl'ff in Er.

vs.

JOHN G. MYERS.

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IN ERROR TO THE CIRCUIT COURT U. S. FOR THE DISTRICT OF MAINE.

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(*Writ of Error.*)

UNITED STATES OF AMERICA,
*First Circuit, Maine District.*

The President of the United States: To the Honorable the Judges of the Circuit Court of the United States for the First Circuit and District of Maine, greeting:—

Because in the record, process and proceedings, as also in the rendition of the judgment of a plea which is in the said Circuit Court of the United States for the First Circuit and District of Maine, before you, between John G. Myers, of the city of Boston, State of Massachusetts, and a citizen of said State of Massachusetts, and of the United States, plaintiff, and Levi Morrell, of Westbrook, in the County of Cumberland, State of Maine, a citizen of said State, and of the United States, and in our said District of Maine, defendant, in a plea of the case, manifest errors have happened, to the great damage of the said Levi Morrell, as by his complaint appears.

We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record, process and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, on the first Monday of December, A. D. 1855, in the said Supreme Court, to be then and there held; that the record, process and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and custom of the United States should be done.

Witness the Honorable Roger B. Taney, Chief Justice of the said Supreme Court, this fifth day of November, A. D. 1855.

GEO. F. EMERY,
*Clerk of the Circuit Court U. S., for Maine District.*

*Maine District, ss: First Circuit.*
CIRCUIT COURT OF THE UNITED STATES.
Allowed by

ASHUR WARE,
*District Judge of the United States for said District, one of the Judges of said Circuit Court, and acting as such Circuit Judge.*

(*Return on Writ.*)

*District of Maine, ss:*

Pursuant to the foregoing writ to us directed, we do hereby, under our seal, distinctly and openly send the record, process and proceedings in the suit aforesaid, with all things concerning the same, together with this writ, to the Supreme Court of the United States at Washington, to be holden at the time above mentioned.

ASHUR WARE,
*District Judge of the United States for said District, one of the Judges of said Circuit Court, and acting as such Circuit Judge.*

(*Citation.*)

The United States of America to John G. Myers, of the city of Boston, State of Massachusetts, and a citizen of said State of Massachusetts and of the United States:—

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, on the first Monday of December next, pursuant to a writ of error, filed in the Clerk's office of the Clerk of the Circuit Court of the United States for the District of Maine, wherein said Levi Morrell, of Westbrook, in the County of Cumberland, State of Maine, a citizen of said State and of the United States, and in our said District of Maine, is plaintiff in error, and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Roger B. Taney, Chief Justice of the said Supreme Court, at Portland, in said District of Maine, this fifth day of November, A. D. eighteen hundred and fifty-five.

GEO. F. EMERY,
*Clerk.*

(*Return on Citation.*)

UNITED STATES OF AMERICA,
*Maine District, ss.*

*November 5th*, A. D. 1855.

I have this day served the within citation upon the within named John G. Myers, by delivering to him in hand a true and attested copy of the within.

F. A. QUINBY,
*U. S. Dep'y Marshal, Maine District.*

| Fees. | |
|---|---|
| Service, | $2 00 |
| Trav. 1 m. | 06 |
| | $2 06 |

(*Bond.*)

Know all men by these presents that we, Levi Morrell, of Westbrook, in the State of Maine, as principal, and George Warren, of said Westbrook, and Nathan L. Woodbury, of the city of Portland, in said State, as sureties, are holden and stand firmly bound and obliged unto John G. Myers, of Boston, in the County of Suffolk and commonwealth of Massachusetts, in the full and just sum of thirteen thousand dollars, to be paid to the said John G. Myers, his attorney, executors, administrators or assigns, to the which payment, well and truly to be made, we bind ourselves, our heirs, executors and administrators, firmly by these presents.

Sealed with our seals, and dated the fifth day of November, A. D. one thousand eight hundred and fifty-five.

The condition of the above obligation is such, that whereas, at a term of the Circuit Court of the United States, for the First Circuit, begun and holden at Portland, within and for the District of Maine, on the twenty-fourth day of September, A. D. 1855, the twenty-third day of said September being on Sunday, and by adjournments from time to time continued to the fifth day of November in the year aforesaid, in an action pending therein, in which John G. Myers aforesaid was plaintiff, and said Levi Morrell was defendant, judgment was rendered therein against the said Levi Morrell, and said Levi Morrell has sued out a suit of error to the Supreme Court of the United States, next to be holden at Washington, on the first Monday of December next, to reverse the judgment aforesaid:

Now, therefore, if the above named Morrell shall prosecute his writ of error to effect, and answer all damages and costs if he shall fail to make good his plea, then this above obligation shall be void, otherwise shall remain in full force and virtue.

LEVI MORRELL, [L. S.]
GEORGE WARREN, [L. S.]
N. L. WOODBURY. [L. S.]

Signed, sealed, and delivered in presence of the subscriber, as a witness to the several signatures of the three obligors.

SAMUEL WELLS.

*Nov. 5th*, 1855.

Approved, A. WARE.

A true copy of the original on file.

Attest, GEO. F. EMERY,
*Clerk.*

(*Assignment of Errors.*)

To the Honorable Justices of the Supreme Judicial Court of the United States.

Complains Levi Morrell of Westbrook, in the State of Maine, and a citizen of said State of Maine, that in the record, process, and

proceedings of an action wherein John G. Myers of Boston, in the Commonwealth of Massachusetts, and a citizen of said Commonwealth, was plaintiff, and the said Levi Morrell was defendant, in the Circuit Court of the United States, which was begun and holden at Portland, within and for the District of Maine, on the twenty-fourth day of September A. D. 1855, the twenty-third day said September being Sunday, and by adjournments from time to time, continued to the fifth day of November, in the year aforesaid, whereof an authenticated transcript shall be produced in the said Supreme Court of the United States, next to be holden at Washington, on the first Monday of December, in the year of our Lord one thousand eight hundred and fifty-five, the following manifest errors have intervened, that is to say, the said Circuit Court erred in rendering judgment in the said action,

*First.* Because the said Circuit Court erred in not complying with the requests of said Morrell, as contained in his Bill of Exceptions, which are a part of the record in the action of Myers against Morrell, and which are made a part of this assignment of errors, to construe the contract and instruct the jury according to said requests and prayers.

*Second.* Because, the said Circuit Court erred in instructing the jury, "That if the notes, or any of them, remained unpaid at their maturity, and the endorsers were charged by demand and notice, this amounted prima facie, to such a necessity as was contemplated by the contract;" whereas, the construction should have been, that when said notes arrived at maturity, and the endorsers were charged by demand and notice, then an absolute and fixed necessity arose as contemplated by the contract, and the defendant was then authorized to sell enough of the bonds to pay the notes.

*Third.* Because, the said Circuit Court erred in instructing the jury, "That if the company, before the sale of any of these bonds, in fact paid a part of these notes, such payment relieved an equal amount of the bonds earned by the plaintiff, and deposited with the defendant from the lien created by the contract, and the plaintiff became thereupon entitled to recover that amount of these bonds from the defendant, and the defendant had not the power to sell them;" whereas, the instruction should have been, that the defendant was only bound to surrender to the plaintiff such part of the bonds as were "not needed for such indemnity," and that the defendant had a right to retain such portion of said bonds, notwithstanding any partial payments by the company of said notes as would afford a complete indemnity to the endorsing directors for those notes.

*Fourth.* Because, the said Circuit Court erred in the construction given to the jury, that, "In reference to the transactions testified to by Emery, that the jury must determine whether they amounted to sales of the bonds held by Morrell, and subsequent exchanges of those bonds for new bonds of the company by the purchasers, and Emery as treasurer of the company, or whether they amounted to

sales of the new bonds of the company; that if to the former, then the bonds held by Morrell were applied to pay the notes; if to the latter, then the company paid the notes by their new bonds. That in considering this question, mere forms were of no importance. That the jury must look for the substance and real nature of these transactions. That if all parties concerned in them expected and intended that what would actually be done, would be that the purchasers would part with their money, or their notes, and receive, in lieu thereof, the new bonds of the company, and this in each case was the actual result of the transaction, and the parties did not contemplate the delivery of the old bonds, and the option to retain them, as a matter of any substantial importance, and in fact, it had no practical effect upon the transactions, then the jury ought to treat the transactions as sales of the new bonds of the company. But, on the other hand, if the parties actually intended sales of the old bonds held by Morrell, with an option to exchange them for the new bonds, and this right to retain the old bonds was a matter of some practical importance, and not a mere form to be gone through in order to get the new bonds, while an appearance of selling the old was presented, then the jury ought to consider the old bonds as sold and the subsequent exchange thereof for new bonds would not amount to a payment of the notes by the new bonds."

Whereas, the instruction should have been, that the defendant was not to be held accountable for the acts of the company or its treasurer, performed without his knowledge and agency, in the mode of selling the bonds; that it was enough for him if there was a necessity for selling the bonds, and an employment of his agent by the company to exchange the new bonds for the old ones, without any direction on his part, would not impair the sale of the old bonds by him, or relieve the old bonds from the lien imposed by the contract; and, whereas, the testimony of said Emery is not susceptible of the meaning which the jury were instructed they might put upon it, which testimony of said Emery is contained in said bill of exceptions, and is made a part of this assignment of errors.

*Fifth.* Because said Circuit Court erred in the instruction given to the jury, "That it was incumbent on the plaintiff to show that he had earned, by work on the road, under his contract with the company, some part of the bonds deposited with the defendant, and he could recover for none which he did not show he was thus entitled to as against the company. But that under the contract, to which Morrell became a party by his receipt, the plaintiff had a right to look to Morrell for such of these bonds as he had thus earned, and which had been relieved from the lien created by the contract."

Whereas the instruction should have been in accordance with the contract, that the plaintiff had no right to look to the defendant for such of these bonds as he had earned under the contract, but should look to the company alone for any of said bonds to which he was thus entitled, and that said Morrell was bound to return such of said

bonds as were not needful for indemnity to the company, and not to the plaintiff.

*Sixth.* Because the said Circuit Court erred in the instruction given to the jury, "That if the company were ready and willing to exchange their new bonds for these notes at par, and purchasers would take the new bonds at seventy per cent., and thirty per cent. of the amount of the notes could have been raised by sales of such the old bonds in the hands of Morrell as belonged to the company, leaving unsold such part of the bonds in Morrell's hands as belonged to the plaintiff, and Morrell was aware of these facts, then it was his duty to the plaintiff to have thus paid the notes, and to have restored to the plaintiff the bonds he had earned."

Whereas the instruction should have been, that the defendant was under no obligation to take the new bonds under such circumstances; that a mere readiness and willingness on the part of the company, without an actual offer of the bonds to the plaintiff, was unimportant and unavailing; that such readiness and willingness could not be expressed without a vote of the company to that effect; and that if the defendant had taken the new bonds at par, when they were worth but seventy per cent., he would have been accountable to the company for the thirty per cent., or the plaintiff would have lost the same when he came to settle with the company.

*Seventh.* Because said Circuit Court erred in the instruction given to the jury, "that to recover in this action no special demand of the bonds need be proved; the service of the writ, upon the admitted facts of the case, was a sufficient demand."

Whereas the instruction should have been, that a demand of the bonds should have been made, by the plaintiff on the defendant, before the service of the writ in this case, and that the defendant was not bound to account to the plaintiff for the bonds, or the proceeds of them, without a demand before the service of the writ.

*Eighth.* Because that the judgment aforesaid, which was for the plaintiff, should have been given for the defendant.

Wherefore the defendant prays the consideration of the said Supreme Court of the United States, and that the judgment aforesaid, and every part thereof, may be reversed.

SAMUEL WELLS,
*Counsel for Defendant.*

MAINE DISTRICT, ss. *Circuit Court U. S.,*
*September Term*, 1855, *holden by adjournment Nov.* 5, 1855.
(Filed in Court.)

Attest,
GEO. T. EMERY, *Clerk.*

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(*Exceptions.*)

UNITED STATES OF AMERICA.

CIRCUIT COURT OF THE UNITED STATES,
*for the First Circuit, Maine District, ss.*

JOHN G. MYERS,
vs.
LEVI MORRELL. } Sept. Term, A. D. 1855.

Be it remembered, that the aforesaid John G. Myers having, on the eighth day of November, in the year of our Lord eighteen hundred and fifty-four, brought his action of assumpsit, returnable to said Circuit Court, to be holden on the twenty-third day of April then next, wherein the said John G. Myers sues for and demands damages against the said Morrell for the breach and non-performance of certain agreements and promises therein set forth in an action or plea of assumpsit, as fully appears by the writ and declaration, as a part of the record in said case; and the said writ and declaration, including the several agreements and promises therein set forth, are hereby made a part of this bill of exceptions, and a true and perfect copy thereof is hereunto annexed and marked *A*; and the said writ, including the said declaration and the several agreements and promises therein set forth, having been duly served and returned, when and where the same was returnable, and the action aforesaid having been duly entered in said Court, was continued until the present term of the said Circuit Court, which was begun and holden at Portland, within and for said District, on the twenty-fourth day of September, in the year of our Lord eighteen hundred and fifty-five, the twenty-third of said September being on Sunday, when the said John G. Myers appeared by his counsel, and the said Morrell appeared by his counsel, and the proceedings hereinafter mentioned took place.

The cause was then opened to the jury.

The said Morrell pleaded the general issue of non-assumpsit, and also filed a brief statement of a former judgment between the parties for the same cause of action. The said Myers duly joined the general issue aforesaid. The pleadings are made a part of these exceptions, and are marked *B*, and are hereunto annexed.

The said Myers introduced in evidence articles of agreement entered into between himself and others, and between himself alone, and the York and Cumberland Railroad Company, bearing date respectively the twelfth day of August, 1848, the third day of January, A. D. 1850, the fifth of day August, A. D. 1850, and the sixth day of February, A. D. 1851, all of which articles of agreement are hereunto annexed, and made a part of these exceptions, and are marked *C*.

The said Myers also introduced in evidence the books of records and of accounts of the York and Cumberland Railroad Company,

and the annual reports of the President and Directors of said Company, and read in evidence to the jury certain portions thereof. Such portions read to the jury are hereunto annexed, and are made a part of these exceptions, and are marked *D.*

The said Myers also introduced in evidence a receipt, given by said Morrell to said Myers, dated February 17, A. D. 1851, which is hereunto annexed, and is made a part of these exceptions, and is marked *E.*

The said Myers also introduced in evidence a mortgage made by the said Company to himself of their railroad to secure the payment of certain bonds therein stated, a copy of which mortgage is made a part of these exceptions, and is hereunto annexed and marked *F.*

The said Myers called Daniel C. Emery as a witness solely to prove the fact hereinafter stated, who testified to the authenticity of the reports of the Treasurer of said Company, made in A. D. 1851 and 1852. A copy of said reports is made a part of these exceptions, and is hereunto annexed and marked *G.*

The said Myers introduced in evidence a written demand, signed by himself, and addressed to said Morrell, for certain bonds therein stated, and bearing date the fourteenth of April, A. D. 1852, which demand is made a part of these exceptions, and is hereunto annexed and marked *H.*

The plaintiff here rested his case.

(*Testimony of D. C. Emery.*)

Daniel C. Emery, who was called by said Morrell, having been previously called by said Myers, further testified, that he was Treasurer of the Company aforesaid at the date of the contract of the sixth day of February, A. D. 1851; that the twenty-eight thousand and five hundred dollars of the bonds mentioned in the contract were delivered to said Myers; that the sixty-one thousand five hundred dollars mentioned in the contract of the bonds of the Company were delivered by him to the said Morrell, that none of the last named bonds were ever delivered to said Myers, and he never had them in his possession. Morrell afterwards placed the last named bonds in his hands and showed to him the authority to sell them at eighty-five per cent., but he could not make sale of them at that price. My impression is they were placed in my hands in the fall of 1851. The first bond was sold conditionally, March 8, 1852, and the witness continued to sell them up to August, 1852, and made all the effort to sell them he could for as much as possible. In the first place he applied to the brokers, then to the holders of the endorsed notes, and to the endorsing directors, to purchase said bonds, and they all declined to purchase at eighty-five per cent. He used every reasonable effort to sell the bonds, and could only get the seventy per cent. under the second authority of the endorsing directors to said Morrell. He received in all from the sale of the bonds delivered to him by said

Morrell as aforesaid forty-three thousand and fifty dollars, and applied said sum in taking up the endorsed notes mentioned in the contract of the sixth of February, 1851. The first authority fixing the terms of the sale is dated August 26, 1851, a copy of which is hereunto annexed and marked *I*. The second authority is dated January 7, 1852, and a copy of which is hereunto annexed and marked *J*. Both of said authorities are made a part of these exceptions.

The said Emery further testified, that the names of that portion of the Directors who endorsed the notes mentioned in said contract are as follows: F. O. J. Smith, Benjamin J. Herrick, Rufus McIntire, George Warren, Josiah Pierce, John A. Poor, Levi Morrell, and N. L. Woodbury. The whole number of the Directors of said Company for 1851 and 1852, were thirteen. The notes endorsed as aforesaid were all protested as they became due, and before he sold said bonds.

The witness here exhibited Schedule *A*, being a memorandum of notes of the York and Cumberland Railroad Company, endorsed by the Directors, outstanding February 6, 1851; also Schedule *B*, which is a memorandum of notes paid and taken up by Levi Morrell, with money received from sale of bonds; also Schedule *C*, which is a memorandum of endorsed notes outstanding and still unpaid; also Schedule *D*, which is a memorandum of bonds sold by Levi Morrell, all of which schedules are hereunto annexed and made a part of these exceptions. There is nothing left of the avails of said bonds, and the endorsers are held, as the witness supposes, for the balance due of the endorsed notes.

At the time said bonds were sold by him, the company had no money; there was something due on subscriptions, but he found it impossible to collect them. The outstanding notes have been sued.

On cross-examination the witness stated, the endorsed notes were entered on the books of the company with other notes, and in making the schedules he had to pick them out. He had a book in which is an account of the sale of the bonds, and he made a transcript for another case. He sold the bond on the 18th of March, 1852, to Stephen Hinkley, and that he has no recollection he bought that bond of Stephen Hinkley. He presumes the bond book will show when he parted with any bond of the Company. On the 30th of April, 1852, the witness sold a part of said bonds to said Morrell, amounting to five thousand two hundred and fifty dollars, and applied the same in taking up said endorsed notes. He could not tell what particular notes said Morrell took. He sold bonds to several persons on that day. He had no right to take up the endorsed notes with the new bonds. The directors authorized him to pay all debts of the Company in new bonds, at eighty-five per cent. for said bonds. His impression is he never had authority to sell new bonds at less than eighty-five per cent. In every instance when he sold an old bond, he told the purchaser he was authorized to exchange it for a new one, and except in two cases, did so before the purchaser left the office, and thus made the exchange.

April 30, 1852, he sold to N. L. Woodbury three of said bonds for one thousand dollars each, for twenty-one hundred dollars. June 21, 1852, witness sold him two other bonds, amounting to fifteen hundred dollars, for ten hundred and fifty dollars. April 30, 1852, he sold to Josiah Pierce five bonds, amounting to four thousand five hundred dollars, for thirty-one hundred and fifty dollars. He sold none to John A. Poor. He sold to Charles Q. Clapp, 30 June, 1852, three bonds, amounting to fifteen hundred dollars, for ten hundred and fifty dollars; and on August 27, 1852, he sold to said Clapp fourteen bonds, amounting to seven thousand dollars, for four thousand and nine hundred dollars.

He does not recollect as said Myers gave him any receipt for the sixty-one thousand five hundred dollars in bonds; he charged them to him in the leger account of the Company, and delivered them to said Morrell, the 17th of February, 1851, and he receipted for them to me upon the authority of the contract, said Myers being present and concurring. The bonds were not the property of Myers, he had not earned them, and the witness said he had no authority to deliver them to said Myers. The figures, 39,842 72, mentioned in his annual report as Treasurer, of July, 1851, are made up of the $28,500 of the bonds delivered to said Myers, and the $11,342 72 that were due him in bonds in the hands of Morrell.

The report of assessments received in 1852, amounts to $10,303 29. The new bonds of the Company sold between July 1, 1851, and July 30, 1852, according to his report, amount to $75,530. But of this amount twenty-two thousand and two hundred were pledged, and I cannot tell how much money was raised. Some of them were given as collateral security.

His recollection is, he had authority to pledge bonds to persons who held notes against the Company. A very large part of the assessments were paid in debts of the Company; the current debts pressed very hard; he thought it impossible to meet them. He made sale of some of the Company bonds at eighty-five per cent., and took up notes where there were no indorsers. A large part of the $75,530 of bonds mentioned in my report were used by me as Treasurer, in taking up Company debts. He never sold any bonds for cash for eighty-five per cent. He found it impossible from the Company means to raise money to take up the endorsed notes. Morrell directed him to sell the Myers bonds, and he did so. The Company were desirous of getting up the old bonds, as they had made another contract with Mr. Wood to build the road, and wished to reduce their debts to $40,000. Another reason was the old bonds were imperfect, the coupons not being attached to the bonds, and the bonds also drew interest, and the bonds were payable to said Myers, and not to a trustee, and doubts existed as to their validity. He could not have sold the bonds in Morrell's hands, if the indorsing directors had not purchased a part of them, and thereby helped make a market for them. Some $4,534 47 of the Company's funds

other than the Morrell bonds, were appropriated to pay some of said indorsed notes. The $20,000 of Herrick bonds were not included in my account of bonds, and were never entered in the books of the Company by me.

The books show due Myers, in bonds, on the first division of the road, $11,342 72, and charged to him as in Morrell's hands, and on the fourth division, $11,527 95. A part of the indorsed notes matured, and were renewed before Morrell took them up. They were renewed because there was no money to pay them. He received no pay, in cash, for Company new bonds; he took in pay for them old notes outstanding, amounting to $49,500; this was entirely distinct from the indorsed notes. The Company was bankrupt in 1852, and could not meet its liabilities. The residue of the assessments collected in 1852, beyond the $4,534 47, was appropriated to the expenses of the Company.

Being referred to the bond-book, page 28, the witness said Hinkley bought the old bond, March 8, 1852, and the entry of the new bond taken by him is the same date, he thinks, the delivery of the bond was not the same date. The transaction was conditional. If others would give seventy per cent., he was to take the bond at seventy per cent.; otherwise not, and the bond was to be returned. He has no doubt the schedule of the old bonds already given is correct. His impression is that the transactions, in every case, except Warren's and Hinkley's, were of the date as appears on the bond-book. Warren refused for a long time to buy any of the Morrell bonds; afterward he agreed to take a certain amount, and finally agreed to take more. Some of his transactions were at an earlier date than appears on the book. At first, Warren took bonds and gave the witness a receipt, and the witness did not make the entry till the whole transaction was finished. I stated to each purchaser that Morrell had nothing to do with anything but the sale of the old bonds.

The said Morrell introduced in evidence a notice signed by the indorsing directors, being six of the whole number, dated December 30, 1851, of the proposed sale of the bonds in his hands, a copy of which is hereunto annexed, marked *K*, and is made a part of these exceptions.

(*Testimony of Geo. Warren.*)

George Warren, called by said Morrell, testified that he was director in 1851 and 1852, and also one of the indorsing directors; cannot state the market value of the old bonds; know of no sale of those bonds except by Emery; he bought some of them of Emery, and exchanged them afterwards at the railroad office. Morrell had nothing to do with the exchange of the old bonds for the new. There was no stipulation, on the part of the directors, that the exchange should be made. Not aware that he could have got seventy dollars for those bonds. He knows of no way he could have got that

sum; as a director, he desired to keep up the credit of the company. These bonds were in the market to pay the indorsed notes, and could not be sold. Indorsing directors agreed to take up certain of the indorsed notes, and to take certain of the bonds. That was the reason we had for doing the business. Having to take care of the indorsed notes, we paid them and took those bonds at a higher rate than we otherwise should.

On cross examination, he said that he thinks the arrangement to take those bonds was not in writing. It was not a part of the arrangement that new bonds should be taken for the old bonds. The idea of consolidating the debts of the company was afterwards; it had not been talked of at that time. I think it was in the fall we thought of that, and that they bought the bonds in the spring of 1852. He obtained one note of Joseph Ilsley, and paid dollar for dollar, and one of B. C. Cummings. He made the purchase himself. He took the old bonds away, and did not exchange, he thinks, till fall. He thinks Clapp and Wood were parties in taking up the Morrell bonds. He thinks he took five thousand dollars of the Morrill bonds. He was not aware of any alleged defect in the Morrell bonds when he took them.

(*Testimony of Henry Ilsley.*)

Henry Ilsley, called by said Morrell, testified, he was the notary who protested the indorsed notes. He thinks they were all protested; something like fifty in number, owned by different individuals.

(*Testimony of William H. Wood.*)

William H. Wood, called by said Morrell, testified that, between March and August, 1852, he knew of no sales of said bonds above seventy per cent. Supposed they were worth from seventy to seventy-five per cent.

(*Testimony of C. Q. Clapp.*)

Charles Q. Clapp, called by said Morrell, testified that he took some of the old bonds previous to the new contract with Wood; they were in the market at a nominal value; might have sold from fifty to sixty per cent. Said Morrell had a quantity of those bonds. He was consulted, and with others agreed to make a combination to effect their sale; thought it would be better for the company and all concerned. A subscription was started, and quite a number subscribed at seventy per cent. That rate could not have been realized in any other way. There was some objections to the old bonds, as bonds and coupons both drew interest, and the mortgage did not run to trustees. This circumstance affected the price, consequently the purchasers gave up those bonds and took new ones. The exchange of bonds had no connection with the sale by Morrell, they were

entirely distinct transactions. The market was strengthened by the fact, that those who took the bonds were regarded as men of capital. There was a vote authorizing the exchange of new bonds for old ones, by paying a certain amount of interest. The directors made an effort to exchange new bonds for old to the amount of thirty or forty thousand dollars, between March and August, 1852. The directors denied the company owed Myers; he made claim, and they denied it.

On cross examination, he said that all this matter was done by persons friendly to the road; they considered that in taking the new bonds for the old they benefited the road. The agreement to take the old bonds was some time prior to the actual taking of them. There was an option for every one to keep their old bonds or take new ones. He knows the bonds were sold to pay the indorsed notes, and the directors denied Myers' claim.

(*Testimony of R. McIntire.*)

Rufus McIntire, called by said Morrell, testified that he had knowledge of the Morrell bonds, and was present when they were placed in Morrell's hands. When they were sold, there was an endeavor to get a good price. A certain number of gentlemen agreed to take a certain amount. They wanted him to sell; he tried at various places and could not; he applied to four or five persons to buy. They could not have been sold for seventy per cent. in any other way. There was no connection between the sale by Morrell and the exchange of bonds. He stated to persons to whom he applied, that the treasurer would probably exchange, and give new bonds for old.

On cross examination, he said that they agreed to get a sale as far as they could. The suggestion as to the exchange of bonds was informal. He supposed they might be exchanged. Never knew any arrangement or decision to that effect. He gave no such assurance; it was a mere suggestion.

(*Testimony of N. L. Woodbury.*)

Nathan L. Woodbury, called by said Morrell, testified, that every person who took the old bonds took them with the right to exchange for the new or not as he saw fit. There was no connection between the sale by Morrell and the exchange of new bonds for old.

(*Testimony of John A. Poor.*)

John A. Poor, called by said Morrell, testified, that he was a director in 1851 and 1852, and was also one of the indorsing directors, and one of those who fixed the terms for the sale of the bonds. They were called on to pay those notes, and were threatened with suits. They offered the bonds in Morrell's hands at eighty-five per cent., and tried to find a market for them, and could

not, and subsequently directed them to be sold at seventy per cent. They could not be sold easily at that rate. Several of the endorsers agreed to advance the money, and take the bonds at seventy per cent. He knew a majority of the bonds were sold. The indorsers had nothing to do with the new bonds. One who bought an old bond had nothing to do with new bond. Charles Q. Clapp bought some of the old bonds, and Mr. Wood agreed to take some; they were not indorsers. The directors created a mortgage, and placed it in the hands of trustees. He had a bond issued to Myers, and he exchanged it for a new one.

On cross examination, he said that the directors made every effort to pay the debts of the company. The indorsers had nothing to do with new bonds. It was difficult to sell either old or new bonds.

The said Morrell introduced in evidence the indorsed notes of said company, mentioned in the contract of the sixth of February, 1851, and which were paid and taken up by him by the proceeds of the sales of said bonds put into his hands to hold as an indemnity for said indorsers. Said notes taken up by him are described in a schedule made by Daniel C. Emery, marked B, and mentioned in the testimony of said Emery. Said schedule is made a part of these exceptions.

And the said Morrell, at the trial, and before the said cause was committed to the jury, contended that the true construction of the contract of the sixth of February, 1851, is as stated in his requests hereinafter made, and requested the Hon. Justice who presided at the trial to construe the said contract according to said requests, and to instruct the jury according to said requests; and also to instruct the jury that said action could not be maintained without proof of a demand made before its commencement.

The said requests are as follows:—

(*Defendant's Requests for Instructions.*)

1. That, by the true construction of the contract of the sixth of February, 1851, the said Myers has no claim on said Morrell for said bonds, or the value of them, because the said company, and not said Morrell, were to reissue and redeliver the balance or excess of said bonds, not needed for the indemnity of the indorsing directors, to said Myers, and that said Morrell is accountable only to said company for said balance or excess of said bonds.

2. That said Myers was not entitled to any of said bonds until all of said indorsed notes mentioned in said contract were paid.

3. That said bonds were deposited with said Morrell to indemnify the indorsing directors, who were interested in the same to the extent of the indemnity required, and any omission of duty or error of proceeding on the part of said Morrell would not deprive said indorsers of said indemnity; and that, if the sale of said bonds by said Morrell were invalid, the bonds were still holden against said Myers for said indemnity.

4. That the non-payment of the indorsed notes mentioned in said contract, when they arrived at maturity, created a necessity for selling the bonds put into said Morrell's hands by the parties to the said contract.

5. That unless funds were furnished to said Morrell by said company, he was bound to sell said bonds when said notes became due, for the purpose of paying them, the terms being fixed by a majority of the indorsing directors.

6. That the mere possession of funds by said company, when said notes became due, would not prevent or supersede the necessity of a sale of said bonds.

7. That if the possession of funds by the company aforesaid should be regarded as preventing the necessity of selling said bonds, those funds must be such as were attachable in the ordinary course of law.

8. That said Morrell was not to be affected by the exchange of the new bonds for the old ones, by Daniel C. Emery, the treasurer of said company, because he had authorized said Emery to act as his agent in selling said bonds.

9. That as the demand made on the 14th of April, 1852, by said Myers on said Morrell, which is made a part of these exceptions, and marked H, was at a time when only one of said bonds had been sold by said Morrell, and before the company had paid any of said indorsed notes, the said demand was premature and insufficient.

But the Hon. Judge did not comply with said requests, except so far as is hereinafter stated in the instructions given.

(*Instructions.*)

The jury were instructed—

1. That if the defendant had sold bonds placed in his hands under the contract of the day of , which the plaintiff had earned, and become entitled, as against the company, to have delivered to him, it was incumbent on the defendant to show that he had duly executed the power of sale which the contract conferred on him. That this was not an absolute power, but was so qualified by the contract that it was to arise only in case of necessity. That if the notes, or any of them, remained unpaid at their maturity, and the indorsers were charged by demand and notice, this amounted *prima facie* to such a necessity as was contemplated by the contract. That the ability of the company to pay, if they neglected or refused to pay the notes, did not prevent a sale of the bonds from being necessary, within the meaning of the contract. But, inasmuch as the defendant, during all the time in question, was himself a director of the company, if the company were able to pay the notes, and he colluded with the other directors to withhold payment, in order to apply the plaintiff's property to the payment of these debts of the company, he could not avail himself of a necessity which he had thus been instrumental in creating. That such conduct would be fraudulent on his

part, and a necessity thus arising was not what was contemplated by the contract.

2. That if the company, before the sale of any of these bonds, in fact paid a part of these notes, such payment relieved an equal amount of bonds earned by the plaintiff, and deposited with the defendant, from the lien created by the contract; and the plaintiff thereupon became entitled to receive that amount of these bonds from the defendant, and the defendant had not the power to sell them.

3. In reference to the transactions testified to by Emery, that the jury must determine whether they amounted to sales of the bonds held by Morrell, and subsequent exchanges of those bonds for new bonds of the company by the purchasers, and Emery, as treasurer of the company, or whether they amounted to sales of the new bonds of the company. That if to the former, then the bonds held by Morrell were applied to pay the notes; if to the latter, then the company paid the notes by their new bonds. That, in considering this question, mere forms were of no importance. That the jury must look for the substance and real nature of these transactions. That if all parties concerned in them expected and intended that what would actually be done would be that the purchasers would part with their money, or their notes, and receive, in lieu thereof, the new bonds of the company, and this, in each case, was the actual result of the transaction, and the parties did not contemplate the delivery of the old bonds, and the option to retain them, as a matter of any substantial importance, and, in fact, it had no practical effect upon the transactions, then the jury ought to treat the transactions as sales of the new bonds of the company. But, on the other hand, if the parties actually intended sales of the old bonds held by Morrell, with an option to exchange them for the new bonds, and this right to retain the old bonds was a matter of some practical importance, and not a mere form to be gone through in order to get the new bonds while an appearance of selling the old was presented, then the jury ought to consider the old bonds as sold, and the subsequent exchange thereof for new bonds would not amount to a payment of the notes by the new bonds.

4. That it was incumbent on the plaintiff to show that he had earned, by work on the road, on his contract with the company, some part of the bonds deposited with the defendant, and he could recover for none which he did not show he was thus entitled to as against the company. But that under the contract to which Morrell became a party by his receipt, the plaintiff had a right to look to Morrell for such of these bonds as he had thus earned, and which had been relieved from the lien created by the contract.

5. That if the company were ready and willing to exchange their new bonds for these notes, at par, and purchasers would take the new bonds at seventy per cent., and thirty per cent. of the amount of the notes could have been raised by sales of such the old bonds in the hands of Morrell, as belonged to the company, leaving unsold

such part of the bonds in Morrell's hands as belonged to the plaintiff, and Morrell was aware of these facts, then it was his duty to the plaintiff to have thus paid the notes, and to have restored to the plaintiff the bonds he had earned.

6. That to recover, in this action, no special demand of the bonds need be proved; the service of the writ, upon the admitted facts of the case, was a sufficient demand.

And the said Morrell did then and there before said cause was finally submitted to the jury, except to the said opinions, construction of said contract, rulings, determinations, and omissions to instruct the jury, as prayed for in said requests, of the said Hon. Justice, and insisted that the instructions prayed for in his requests should be given to the jury, and that the construction of the contract as prayed for by him was the true interpretation of it.

And as the said matters so produced, are given in evidence by the said Morrell, and presented in his said requests, and insisted upon as aforesaid, do not appear by the record in the said case, the said Morrell did then and there propose his aforesaid exceptions to the opinions, rulings and determinations of the said Hon. Justice, and to his construction of said contract, and requested the said justice to put his seal to this bill of exceptions containing the several matters so produced and given in evidence and presented in said requests, on the part of said Morrell.

All which being found to be in conformity with the truth, are allowed by the Court.

[L. S.] B. R. CURTIS,
*Jus. S. C. U. S.*

(*Copy of Writ.*)

A.

THE PRESIDENT OF THE UNITED STATES OF AMERICA,
*District of Maine, ss:*

[L. S.] To the Marshal of our District of Maine, or his Deputy, greeting:

We command you to attach the goods or estate of Levi Morrell, of Westbrook, in the County of Cumberland, State of Maine, a citizen of said State, and of the United States, and in our said District of Maine, to the value of thirty thousand dollars, and for want thereof to take the body of the said Levi Morrell (if he may be found in your precinct), and him safely keep, so that you have him before our Circuit Court, next to be holden at Portland, within and for our District of Maine, on the twenty-third day of April next; then and there in our said Court to answer unto John G. Myers, of the city of Boston, State of Massachusetts, and of the United States, in a plea of the case, for that whereas, by a certain agreement and contract in writing entered into by and between said plaintiff of the one part, and the York and Cumberland Railroad Corporation of the

other part, in modification of a previous contract existing between said last named parties, and at said Portland, on the sixth day of February, in the year of our Lord one thousand eight hundred and fifty-one, it was agreed and covenanted by said parties to said contract that said plaintiff should deliver to said defendant certain bonds with coupons annexed issuable by the said railroad corporation to said plaintiff, and amounting in all to the sum of sixty-one thousand seven hundred and thirty-two dollars, the same to be held by said Morrell on special deposite for the exclusive security and indemnity of the several and individual directors of said corporation against harm and loss, for and on account of their several and respective liabilities as endorsers for the debts of said company or corporation, and that said bonds and coupons should be subject to be used and sold in payment and discharge of the debts so endorsed as necessity should require, and on such terms as the majority of said endorsing directors should deem expedient; but as fast and soon as said endorsed debts should be satisfied, either by sale of said bonds, or other means of said company, the excess of said bonds not needed for such indemnity, or an amount equal to any sum that should be so satisfied out of any other resources of said company, should be issued anew and re-delivered to said Myers, or his assigns, by said Morrell, in payment of work and material then to be furnished by said Myers to said company in completion of so much of said Myers' said prior existing contract with said company as pertained to the first division of said company's road, specially described in said prior existing contract, as the same should or would become due said Myers in case said modified contract had not been made, and in pursuance and fulfilment of said last named contract with said company, said Myers did, at said Portland, deliver to said Morrell, on the seventeenth day of February, A. D. 1851, and last aforesaid, sixty-one thousand five hundred dollars of the said bonds and coupons so issued to the plaintiff by said company, all being then and there of the value of sixty-one thousand five hundred dollars; and in consideration thereof, the said Morrell then and there, to wit, at Portland aforesaid, on said seventeenth day of February, A. D. 1851, by his memorandum or agreement in writing, acknowledged the receipt of said bonds and coupons, of the value aforesaid, and amounting to the sum of sixty-one thousand five hundred dollars, of said plaintiff, and then and there in said writing promised the same should be accounted for, and for the purposes specified in said Myers' aforesaid agreement and contract with said company, dated, as aforesaid, on the sixth day of February, A. D. 1851. Yet the said Morrell, not regarding his said promise, never accounted to the plaintiff for and for the purposes aforesaid, the said bonds and coupons, though often requested, but neglects and refuses so to do, and the plaintiff avers, that said bonds and coupons never became necessary for the indemnity of said endorsing directors, and were never used and sold by said Morrell in payment and discharge of the debts of said company, endorsed by

said directors in the manner and on the terms provided by the agreement and contract before mentioned; but the said bonds, to wit, to the amount of twelve thousand dollars, and coupons thereto pertaining, all of the value of fifteen thousand dollars, became due and returnable by the said Morrell to the plaintiff, and in consideration thereof, the said Morrell became liable, and promised to pay the same to the plaintiff on demand, yet wholly neglects and refuses so to do, although thereunto requested.

Also for that said defendant at said Portland on the seventeenth day of February, A. D. 1851, in consideration of having received of the plaintiff sixty-one thousand five hundred dollars in the bonds of the York and Cumberland Railroad Companies, secured by mortgage with coupons for interest pertaining thereto, they being of the value of sixty-five thousand and five hundred dollars, then and there promised the plaintiff to render him an account thereof on demand. Yet though requested hath refused so to do.

Also for that said defendant being indebted to the plaintiff in the sum of fifteen thousand dollars, at said Portland on the day of the purchase of this writ, for so much money before that time had and received by the said Morrell to the plaintiff's use in consideration thereof, then and there promised the plaintiff to pay him the same sum on demand.

Also for that said defendant at said Portland on the day last aforesaid, being indebted to the plaintiff in the sum of fifteen thousand dollars for so much money before that time lent and accommodated by the plaintiff to the defendant at his request, then and there promised to pay the plaintiff the said sum on demand. Yet though requested, said Morrell has not paid said sum, to the damage of the said plaintiff as he says, the sum of thirty thousand dollars, which shall then and there be made to appear with other due damages. And have you there this writ, with your doings therein.

Witness the Honorable Roger B. Taney at Portland the eighth day of November, in the year of our Lord one thousand eight hundred and fifty-four.

GEO. F. EMERY,
*Clerk.*

(*Plea.*)

B.

C. C. U. S.,
*District of Maine.*

JOHN G. MYERS
vs.
LEVI MORRELL. } Sept. T., 1855.

And now the said Morrell comes and defends the wrong and injury, when and where, &c., and for plea says that he never promised the

said Myers in manner and form as the said Myers has declared against him, and thereof puts himself upon the country.

By CLIFFORD & WELLS,
*his Att'ys.*

And pl'ff likewise by the att'ys.

DEBLOIS & SMITH.

(*Brief Statement.*)

And said Morrell makes the following brief statement in said case: That he expects to prove a former recovery in said case; that said Myers commenced an action against said Morrell, returnable at the Circuit Court of the United States in the District of Massachusetts, at the May term, 1852, for the same cause of action as is alleged in the present suit, and, after several continuances, a verdict and judgment were rendered by said Court in favor of said Morrell in said action.

CLIFFORD & WELLS,
*Att'ys to said Morrell.*

(*Contract between Myers and the Company.*)

C.

*Contract.*

Articles of Agreement.

Articles of agreement made and concluded this twelfth day of August, in the year eighteen hundred and forty-eight, between J. G. Myers, J. P. Rich, E. N. Myers, and D. P. Myers, all of Portland, in the county of Cumberland, doing business under the firm of J. G. Myers & Co., of the one part, and the York and Cumberland Railroad Company on the other part, whereby it is covenanted and agreed as follows, to wit:—

The said J. G. Myers & Co. hereby covenant and agree to do all the work, and in every respect complete in the most substantial and workmanlike manner the road-bed of said railroad, as the same shall be staked out and represented upon the map and profile of said road by the engineer of the same, at his office; said work to include the clearing, grubbing, grading, and ditches; also, box culverts, slope and supporting walls, bridges, track, and fencing, including all the necessary turnouts and turntables, sluices and trestle-work, with the requisite materials and everything necessary to complete a single-track railroad from South Berwick to the city of Portland, excepting buildings, machinery for the road, and land damages.

The same to be executed and conform in all respects to the annexed specifications, and to the instructions of the engineer of said company, as therein set forth. The work to be commenced as soon as practicable after the execution of these presents.

And it is agreed that the chief engineer and his department shall

be employed and organized by said company for the whole road, the said contractors paying the expenses of this department; and surveys for the definite location of the first division, extending from Portland, or at some point near Portland, to Gorham village, shall be immediately made; after which a careful preliminary survey shall be made of the residue of the road near Portland, and from Gorham to South Berwick under and by the direction of the President and Directors of said company.

And it is likewise agreed that the said work, during its progress, shall be subject to the supervision and inspection of said engineer, and shall be made to conform in every respect to his directions; and all bad or imperfect work to be immediately remedied, and the same rendered good and substantial to the satisfaction of said engineer.

And it is further mutually agreed, with a view of preventing all disputes and misunderstandings, and for the speedy adjustment of such as may occur, that the engineer aforesaid shall determine the amount or quantity of the several kinds of work herein contracted to be done, and shall decide every question which can or may arise relating to the execution of the work under this contract on the part of said contractors, and his decision shall be final and conclusive.

And it is further agreed on the part of said contractors that the several stipulations of this contract shall be performed by them, or by workmen under their immediate superintendence, and that no part of the same is to be sub-contracted except by the sanction of the engineer; and that the said contract is not to be transferred, or in any manner disposed of, so as to relieve the said contractors from the immediate charge and responsibility of the work.

Care shall be taken by the contractors to prevent any injury to the proprietors of adjoining fields by the destruction of fences, or by leaving fences, gates, or bars open or imperfectly closed; and any damage occasioned by such neglect shall, it is agreed, be determined by the engineer, and deducted from the value of work done under this contract.

It is likewise agreed on the part of said contractors that all work done under this contract is to be performed without the use of ardent spirits.

And it is further agreed that if any foreman, overseer, or superintendent, or any laborer or workman employed by said contractors, shall, in the opinion of the engineer, execute his work in an unfaithful and unskilful manner, or in any respect prove remiss or inadequate to the performance of his duty, he shall forthwith, by the direction of said engineer, be discharged; and the said contractors shall not employ in the capacity of foreman, overseer, &c., any individual who may have been discharged for neglect or unfaithfulness from any other section of said road, or from any work of internal improvement within the knowledge of said contractors or of said engineer.

And the said company do covenant and agree, that whenever in

said Myers in manner and form as the said Myers has declared against him, and thereof puts himself upon the country.

By CLIFFORD & WELLS,
*his Att'ys.*

And pl'ff likewise by the att'ys.

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The same to be executed and conform in all respects to the annexed specifications, and to the instructions of the engineer of said company, as therein set forth. The work to be commenced as soon as practicable after the execution of these presents.

And it is agreed that the chief engineer and his department shall

be employed and organized by said company for the whole road, the said contractors paying the expenses of this department; and surveys for the definite location of the first division, extending from Portland, or at some point near Portland, to Gorham village, shall be immediately made; after which a careful preliminary survey shall be made of the residue of the road near Portland, and from Gorham to South Berwick under and by the direction of the President and Directors of said company.

And it is likewise agreed that the said work, during its progress, shall be subject to the supervision and inspection of said engineer, and shall be made to conform in every respect to his directions; and all bad or imperfect work to be immediately remedied, and the same rendered good and substantial to the satisfaction of said engineer.

And it is further mutually agreed, with a view of preventing all disputes and misunderstandings, and for the speedy adjustment of such as may occur, that the engineer aforesaid shall determine the amount or quantity of the several kinds of work herein contracted to be done, and shall decide every question which can or may arise relating to the execution of the work under this contract on the part of said contractors, and his decision shall be final and conclusive.

And it is further agreed on the part of said contractors that the several stipulations of this contract shall be performed by them, or by workmen under their immediate superintendence, and that no part of the same is to be sub-contracted except by the sanction of the engineer; and that the said contract is not to be transferred, or in any manner disposed of, so as to relieve the said contractors from the immediate charge and responsibility of the work.

Care shall be taken by the contractors to prevent any injury to the proprietors of adjoining fields by the destruction of fences, or by leaving fences, gates, or bars open or imperfectly closed; and any damage occasioned by such neglect shall, it is agreed, be determined by the engineer, and deducted from the value of work done under this contract.

It is likewise agreed on the part of said contractors that all work done under this contract is to be performed without the use of ardent spirits.

And it is further agreed that if any foreman, overseer, or superintendent, or any laborer or workman employed by said contractors, shall, in the opinion of the engineer, execute his work in an unfaithful and unskilful manner, or in any respect prove remiss or inadequate to the performance of his duty, he shall forthwith, by the direction of said engineer, be discharged; and the said contractors shall not employ in the capacity of foreman, overseer, &c., any individual who may have been discharged for neglect or unfaithfulness from any other section of said road, or from any work of internal improvement within the knowledge of said contractors or of said engineer.

And the said company do covenant and agree, that whenever in

the opinion of said engineer in their employ, this contract shall be wholly completed on the part of said contractors, they will pay for said work the sum of nineteen thousand and five hundred dollars per mile; and in case only a portion of said road shall be built, then said company further agree to pay said contractors for so much road as may be built a *pro rata* sum, or the payments shall be in the ratio which the value of work done bears to the total cost at the above-mentioned rate per mile, having reference to the comparative quantities and value of the same kinds of work in different portions of the line, and the time at which said work is executed, and this ratio and amount to be fixed by the chief engineer.

And it is further agreed that the said contractors shall proceed in the construction of said road to its completion with as much dispatch as the means of the company will prudently admit; but the company shall not be bound to furnish funds at any time to a greater amount than can be collected by instalments upon the shares subscribed for, deducting the amount necessary for contingent expenses, and for purchasing land for the road, building the necessary depots, and equipping that part of the road finished, the said directors using all diligence to collect all assessments, and to get the amount of stock taken up necessary to build and complete said road, the payments to be made not oftener than once a month.

And it is further agreed that seventy-five per cent. of said payments must be in cash, subject to a condition hereafter named, and twenty-five per cent. in the capital stock of said company, to wit: in assessments on the shares held in said company by said contractors until their stock or shares already subscribed for are fully paid, after which the twenty-five per cent. of monthly or other settlements to be paid in certificates of stock.

The amount determined and paid, in the manner above specified, is to be in full compensation for all the materials and labor required to put the same into the work herein contracted for, and to complete the same in all respects as provided for in this contract.

It is further agreed that payments shall be made from time to time, as the work progresses, on the certificate of the engineer for work done. The said engineer to deduct such per centage from the cash due said contractors as he may think proper from the amount of said certificate, not however to exceed ten per cent., and also shall deduct the amount which the said company shall be liable to pay the chief engineer and his department, having regard to economy in this expenditure.

And it is further covenanted and agreed on the part of said contractors, that this contract shall be fully performed and accomplished on their part as soon as practicable, agreeably to the aforesaid stipulations; and if, in the opinion of the engineer, the said contract shall be completely performed as aforesaid, the said engineer shall certify the same in writing under his hand, together with his estimate of work as aforesaid; and the company shall, within

ninety days after notice of such certificate, pay to the said contractors the sum or balance which, according to this contract, shall then be due.

And it is hereby further agreed that if the said contractors shall, in the opinion of the engineer, refuse, or unreasonably neglect to remedy any imperfection which may be pointed out by the said engineer, or in any manner violate the conditions of this contract, so that in the judgment of said engineer there shall be reasonable apprehension that the same will not be completed in the manner and within the time specified, then the engineer shall have the power, and it shall be his duty, to declare and pronounce this contract void and of no effect, and the said company may enter into a new contract with any person or persons for the execution and final completion of the same.

And it is further agreed, by and between the parties to this contract, that in case any difference of opinion shall arise between the parties hereto, as to the construction of this contract, and the true intent and meaning thereof, and of the parties in forming the same, that such difference shall be considered and decided by said engineer; and the said parties do hereby submit all and singular the premises to his award, arbitrament, and decision, and agree that the same shall be final and conclusive between them, to all intents and purposes.

And it is agreed, by the parties to this contract, that the agreements and stipulations in the said contract, and the specifications hereunto annexed, which are to be a part of the same, that so far as relates to the superstructure of the road generally, and fencing of the same, that the quality of the materials, the manner of building, and all other parts of this contract necessary to its completion, not herein specified, shall be the same as the Atlantic and St. Lawrence Railroad; the weight of the iron, per cubic yard, to be the same as used on the Boston and Maine Railroad. Hereby meaning and intending, by all the parts and specifications of this contract, that the said contractors are hereby obligated to complete said road in manner as above specified, and to meet all expenses of the same, of every kind, except land, buildings, and running equipments; all other work to be done and all other materials to be furnished by the said contractors.

And it is further agreed, by parties to this contract, that the said directors may, for want of funds, or other good cause, suspend the work upon the said road when such circumstances shall occur, adjusting and paying said contractors as is fully set forth in the foregoing contract, under the adjudication and arbitrament of the engineer appointed by said directors, whose award shall be final and conclusive between the parties.

And it is further agreed, by the parties, that the directors shall at all times have the direction and the appointment of the section and portion of the road to be opened and built, being governed by the interests of the company, as they shall be developed on the line of the said York and Cumberland Railroad.

And it is further agreed, by the said parties, that this contract shall not take effect, nor operations be commenced on said road, until a portion of the same shall have been located.

And it is also understood, that the location of said railroad, from point to point, shall be on the most practicable route, with regard to saving expense, making the most permanent road, and regarding the company's interest and that of the public. All being subject to the supervision of the engineer.

In testimony whereof, we, the contractors, and the *the* President and Directors of said York and Cumberland Railroad in behalf of said company, have hereunto interchangeably set our hands and seals, the day and year first above written.

JOHN G. MYERS, [L. S.]
JOHN P. RICH, [L. S.]
E. N. MYERS, [L. S.]
DILLON P. MYERS, [L. S.]

by JOHN G. MYERS,
*Contractors.*

JOSHUA RICHARDSON, *Pres.*, [L. S.]
DANIEL C. EMERY, [L. S.]
GEO. WARREN, [L. S.]
BENJAMIN J. HORRICH, [L. S.]
MILES W. STUART, [L. S.]
DANIEL APPLETON, [L. S.]
ARTHUR McARTHUR, [L. S.]
*Pres. and Directors.*

Signed, sealed, and delivered in presence of
E. S. B. POTTER.

(*Specification.*)

SPECIFICATION

*Of the manner of grading or forminy the Road-bed of the York and Cumberland Railroad.*

The ground occupied by, and set apart for, the railroad is to be cleared, for a space of three rods on each side of the centre line, of all trees, stumps, bushes, logs, rubbish, and other vegetable matter; the trees, stumps, and bushes to be cut close to the surface of the ground, and the whole to be removed, or destroyed by burning or otherwise, as the engineer shall direct. When embankments are less than three feet high, all the stumps, large roots, and other vegetable matter must be thoroughly grubbed out, and removed or destroyed, as specified above.

Where the road is graded for a single track, it will generally be fifteen feet wide on the embankments, and twenty-two feet wide at

the foot of the slopes in excavations. The side-ditches are included in the last-mentioned width.

Where the road is graded for a double track, the road-bed will have a surface width on embankments of twenty-six feet, and in excavations thirty-four feet, the side-drains being generally for the same dimensions as above stated. The slopes of the excavations and embankments will usually be one and a half feet base to one foot rise.

In rock cutting, they will not vary much from four inches horizontal to one foot vertical.

Such variation, in the width of the excavations and embankments, the slopes and the dimensions of the side-drains, to be made as the engineer shall from time to time direct.

When the excavations are in clay or other materials unsuitable for the road-bed, the contractor shall excavate to such depth below grade as the engineer shall direct; and if there is any good gravel or other suitable material on or near his work, not likely to be affected by frost, the same shall be placed on the road-bed, covering the whole surface between the side-drains to a depth not exceeding two feet. Clay embankments are in like manner to be covered with gravel of a sufficient depth to guard against the action of frosts.

When embankments are formed by carting, they shall, if required, be made in layers not exceeding four feet in thickness, and in all cases the slopes of the banks shall be made full in the first instance, and carried up faster than the centre; and all vegetable or loose earth, which shall be unsuitable for embankments, shall be removed; and no stumps, logs, or other perishable material shall be placed in the embankments.

All embankments which are carried up to grade with materials taken from cuts, must be entirely free from stone to a depth at least of two feet below grade, and the best material must be reserved for dressing off the surface.

Between the foot of the slopes of the embankments and the side-drains there shall be a space or berme of such width as the engineer may direct. All the earth excavated from road-bed is to be carried into embankments, unless otherwise directed by the engineer. The surplus material, if any, to form double track embankment; and where there may be a deficiency of materials to form the embankments, the excavations for road-bed will be made for a double track, or the earth procured from side-cuts at such points, and transported from such distances, as the engineer may direct. The surplus earth from excavations which cannot be carried into embankments, shall be deposited in a regular manner on either side of the excavation, with such slopes as the engineer shall direct, and so arranged as to convey the drainage or fallen water from the road, leaving a space or berme of not less than fifteen feet in width between the same and the outside line of excavation. The space or berme so left to be excavated in such a manner, and such drains cut as to direct the water which may collect upon it from the railroad. In all places where

spoil banks, or banks for diverting the drainage water from the railroad, are formed, the trees, if any, are to be cut down, and removed or destroyed.

Every description of material required to be removed and raised in forming the road-bed, is to be estimated as excavation, and the quantity ascertained by measuring either the excavation or embankment, as the engineer may determine, and making such allowance in measuring embankments for shrinkage as he shall deem proper.

The embankments and excavations required for road and farm crossings, bridges, and changing the channels and beds of streams, shall be of such dimensions and slopes as the engineer shall prescribe.

The various kinds of excavations to be classified, according to the judgment of the engineer, under the head of earth or rock.

Where retaining walls are required, they will vary in dimensions and slopes according to circumstances, and will be sunk to such depth as is necessary to secure a solid and permanent foundation. The stone used in the walls must be of a firm and durable character, well shaped, and of sufficient size to insure stability. These walls must be so constructed as to form a complete bond throughout their entire thickness, the beds of the stones being laid at right angles with the battered face, and the whole neatly coped with flat stones, at least two feet wide and three feet long.

Slope walls will be of such thickness and slope as the engineer may direct.

Where these walls are founded in deep water, rip-rap foundations will be made of large stone and brush, laid in alternate courses, so as to form a bond.

Refuse stone and other coarse materials found in the excavations shall be placed in the outside of the embankments and next the walls; and all stone embankments, deemed by the engineer necessary to protect the wall and banks, shall be made by the contractor.

Public or private roads, which intersect the line of the railroad, shall not be obstructed by excavation or otherwise, until direction shall be given by the engineer for completing the road across the same; nor shall any crops, or vegetables, or fruit trees, or buildings of any description, or fences, be disturbed, unless by direction of the engineer.

Changes in the position of the road, with a view to perfecting the alignment of the same by straightening or giving more ease and symmetry to the curves, together with variations in the grade line, may be made by the engineer, and no extra allowance shall be claimed therefor.

Before the road is considered finished, the excavations and embankments must be neatly trimmed, and the whole surface made to conform accurately to the slope-stakes and the plain of graduation.

The culverts on the road will be of two kinds. The square or box culverts will be of dry rubble masonry; they will be from two

to three feet span, and from two to five feet high, the thickness of the walls varying according to circumstances. The stones of which they are built must be strong, durable, and well shaped, and laid in such a manner as to form a perfect bond throughout. They will be covered with large flat stones, lapping one foot upon each side-wall, and being from six to twelve inches thick, as the engineer shall deem necessary, fitting together so that the embankment shall not run through into the culvert. The foundations will be paved with flat stone set edgewise in regular courses across the culvert, to be not less than twelve inches in depth; and after the pavement is completed, it shall be well rammed down with heavy beetles, and the interstices be well filled up with gravel.

When required, a course of water-tight sheet piling shall be placed across the culvert at each end, extending not less than three feet below the bottom of the paving, to prevent undermining. The end walls of these culverts will be of hammer-dressed masonry, with a regular coping two and a half feet wide, and not less than six inches thick, projecting three inches over the general face of the wall.

The arched culverts will be of not less than six feet span. Where the foundation is not rock, they will be built on a pavement similar to that described above; or, if the engineer deems it necessary, upon timbers hewn on two sides, and laid two feet from centre to centre crosswise of the culvert. The timbers when hewn must be eight inches thick, and the spaces between them filled with gravel well rammed. Their upper surfaces will be covered with three-inch plank, laid lengthwise of the culvert, well spiked or pinned, and the ends must be secured with sheet piling, as in the box culverts.

The dimensions of the arch-stone to be such as to extend through the thickness of the arch, to be placed perpendicular to the curve of the same, and well and closely fitted.

The outer or ring-stone of the arch to be equal in length, and as nearly uniform in thickness as possible, and to be plain dressed either with a bush-hammer or chisel, and to be well bonded with the contiguous arch-stone, breaking joints at least eight inches.

The wing and end walls of the arch culverts are to be formed of the larger and better shaped stone, hammer-dressed on their exterior faces, and pointed with cement, and both are to be surmounted by a coping of broad stone of a thickness specified in the plan. The coping-stone to be handsomely hammer-dressed, and brought as near to a uniform thickness as possible, and placed firmly and securely upon the walls in a bed of cement. The coping and ring-stone, as also the arch and cap-stone, to be included in the estimate with other masonry, without extra charge.

The abutment walls to be of good rubble masonry, and built of strong, durable stone, of good shape, well bonded and laid in full mortar, made of the best hydraulic cement and clean sharp sand, thoroughly mixed upon a platform of boards, in such proportions as directed by the engineer, and applied to the work within the proper

time for rendering the adhesion and solidification most perfect. The vertical joints will be grouted, and the grout must be made of cement and sand, first formed into well tempered mortar, and then reduced in a box to the proper consistency for running freely by admixture of water.

Cattle guards and passages will consist of two walls of dry masonry of a substantial character, placed from 4 to 6 feet apart, and coped for the reception of a sill on the top of each wall. Where these are designed to pass the water of side drains of common roads, or the drainage of adjoining fields, the same foundation will be adopted as for culverts. When these passes are constructed of wood, they will consist of two bents, placed at the requisite distance apart, and faced with 3-inch plank. The bents will be retained in their proper position by cross timbers substantially framed on to the sills and cap pieces.

The bridge abutments will be rough hammered masonry laid dry. The stones used must be of large size, laid in courses of not less than 12 inches thickness, in such a manner as to well bonded throughout, by a system of alternate headers and stretchers. The headers must be at least four feet long. The stretchers in the face must have at least eighteen inches bed, and at least six inches more bed than face, and the backing-stones must have as much bed as face. The coping-stones of the abutments, and those on which the superstructure rests, must be dressed smooth, and laid in full mortar.

The foundations will be of such description as the character of the ground and the work require, and may, in some localities, consist of piles driven as near together as practicable, and the spaces filled in with layers of concrete; or, if the engineer deems proper, the heads of the piles will be dressed off and timbers framed on to them, upon which one or two courses of plank will be firmly spiked.

Where piles are not required, timber and plank foundations will be adopted, the materials being of such dimensions, and laid in such form as may be thought necessary to insure a firm and uniform bearing.

The foundations for the abutments of small bridges will, when the character of the ground admits, be formed of paving, in the same manner as for culverts.

The proportions and dimensions of the several parts of the culvert's bridge abutments, and other mechanical work, will be represented in the plans.

No masonry shall be laid in mortar (unless by special direction) between the first of October and the first of April.

All materials intended to be used in culverts and bridges, must be examined and approved by the engineer, and those considered by him unsuitable, must be immediately removed to such distance as he shall deem necessary, in order to prevent them from being used in the work.

The whole to be executed in a substantial, faithful, and workman-

like manner, subject to the constant supervision and inspection of the engineer, who shall give such direction from time to time, additional and explanatory to the above specification, as occasion may require.

(*Adjustment.*)

To the Board of Directors of the York and Cumberland Railroad:—

The undersigned, appointed a Committee to adjust all the accounts and differences hitherto unadjusted under the contract of the Board, with J. G. Myers & Co., respectfully reports that the subjoined statement, authenticated by the signatures of the parties, contains such an adjustment, and furnishes the proper basis of future operations under said contract, and precludes, it believes, the probability of future misunderstandings. All which is respectfully submitted.

FRANCIS O. J. SMITH.

ALFRED, *January* 3, 1850.

The undersigned, Francis O. J. Smith, in behalf of the directors of the Y. and C. Railroad, and J. G. Myers & Co., for themselves, having met for the purpose, have concluded the following adjustment of all pending questions under the contract existing between the said Railroad Co. and said Myers & Co.

They find the total of work performed under the contract, to Dec. 1, 1849, according to the estimates of engineers, to be $57,312 30.

Of this sum, twenty-five per cent., amounting to $14,328 07, is payable in the stock of the company.

It is agreed that, pursuant to the terms of the contract, the payments in stock are to made by an apportionment of the amount upon the shares subscribed by said Myers & Co., until fully paid. But for the convenience of said Myers & Co., five thousand dollars of said amount has been issued heretofore on said payments, in full certificates of stock, leaving a balance of $9,325 07 payable under this branch of the contract.

To accommodate the contractors still further in the operations of their work, it is recommended that the rates of appropriation of the payments due, or that may be earned by them, in stock, be so far changed that full certificates of stock be issued to them on each monthly estimate of work performed, equal to one-half of the twenty-five per cent. to be taken in stock for said work, and the same shall be deducted from, and thereby made part of their aggregate subscription of stock; and that the remainder be appropriated on the balance of their subscription for stock, and for which receipts shall be given as to other parties paying instalments on subscriptions, bearing date with the monthly estimate out of which each such payment is derived.

Upon these rules, all accounts from estimates hitherto made shall be adjusted, and after deducting the $5,000 already issued in cer-

tifiates, other certificates and receipts of instalments shall be forthwith issued to said Myers & Co., up to the aggregate of payments made for stock as aforesaid; and so long as their contract is being executed with energy and good faith, the proceeds of work payable in cash ought not to be retained to supply any deficiency that may be due in instalments made upon shares.

By the treasurer's account with said contractors, hereto appended, marked *A*, with appendix marked *B*, it appears that an aggregate of $28,534 53 has been paid said Myers & Co. in cash, or its equivalent, deducting the 25 per cent. payable in stock from the aggregate work performed, on $57,312 30, and the seventy-five cent. payable in cash, of that aggregate, amounts to $42,984 23, ten per cent. of this cash aggregate being retained under the contract, amounting to $4,298 42; also, engineering expenses amounting to $3,531 29, making a total of $7,829 71, leaves a cash aggregate of

| | |
|---|---|
| Work payable, of . . . . | $35,154 52 |
| From this sum deduct . . . | 28,534 53 |
| The balance due on the cash . . | $6,619 99 |

This balance has been provided for as follows: six notes, of five hundred dollars each, payable in one year with interest, dated December 24, 1849, signed by the Treasurer officially, and indorsed by David Hayes, Francis O. J. Smith, John A. Poor, George Warren, and Levi Morrell, in their individual capacity, pursuant to the vote of the Board authorizing a loan of thirty thousand dollars, and with the concurrence of the associate director, J. A. Poor, and the treasurer, T. Robie, Esq. Another $800 note, of same parties, payable in nine months from same date. Another $800 note, payable in one year from same date; two one thousand dollar notes, bearing same date, and payable in fifteen months, with interest on each payable semi-annually; a balance of $19 99.

A question of construction and agreement has arisen respecting the retention of the ten per cent. from the cash payments. Without detailing here the nature of this difference, it has been agreed that ten per cent. of the cash earnings under the contract shall be retained under each estimate of work performed; but on the completion of any entire section of road, which carries it forward from any one to any other distant station, as from Portland to Gorham, from Gorham to the end of the next section authorized by the directors to be open for construction, payment of the ten per cent., or some portion thereof, should be made to said contractors, at least so far as would be requisite to their convenience, and consistent with the indemnity of the company.

Another subject, as the foundation of a claim to indemnity, was presented by said contractors, growing out of what they consider a departure from the spirit if not terms of the contract, in locating the line of their road for construction where it has subjected the con-

tractors, as they say, to needless expense between Bishop's Corner and Gorham Station. The contractors impute this loss to the incompetency of a former engineer.

But in view of the terms of the contract, and of the disposition of both parties to close up and adjust all past claims and differences of any kind and description, the alleged errors and hardships of the location and construction of the road are waived unconditionally, and adjusted in full, and neither party will go behind the present settlement for or on account of any proceedings or disputes that have hitherto arisen respecting the work, or execution of the contract.

In the account from the engineer's department submitted by Mr. Robinson, an item of $13 50 is adjudged to be not properly chargeable to the contractors, and is therefore to be excluded from the charges upon the contractors.

It is also agreed that in future no office rent for engineers in the city of Portland shall be charged to the contractors; also, that no salaries or expenses of the officers of the company, not connected with the engineer department, shall be charged to said contractors under their contract, as might be construed to be its intention from some phrases contained therein.

Under the provision of the contract relating to a suspension of the work, it shall be at all times considered a suspension when the amount of work ordered by the President or Board of Directors shall have been reported by the engineer in his monthly estimate as completed; and the President or Board shall omit for five days thereafter to issue an order for further work to proceed.

FRANCIS O. J. SMITH,
J. G. MYERS.

*January* 3, 1850.

(*Supplemental Contract.*)

Whereas a contract was entered into between the York and Cumberland Railroad Company of the one part, and J. G. Myers & Co. of the other part, for the construction of the bed and track, and certain other appurtenances of said road; said contract is dated August 12, 1848.

And on the 3d of January last past, said contract was explained and modified by certain articles in writing signed by said parties.

And said road company, at a stockholders' meeting holden in Alfred, on the 27th day of April last, expressed a desire for the directors to exercise the needful authority to place the entire road under contract for equipment, as well as construction, for purposes obvious to its interests; and to this end, said company, by said directors, and said J. G. Myers, have this fifth day of August, A. D. 1850, made and entered into this further contract and stipulation, maintaining and preserving in full force all parts of said previous and supplemental contracts with J. G. Myers & Co. which are not

specifically, or for the purpose of carrying out the true meaning of these presents, altered or changed—that is to say,

1st. Said J. G. Myers contracts and stipulates to fulfil and perform said previous contracts, as existing under this additional provision relating thereto, or cause the same to be done by the said J. G. Myers & Co.

2d. To repay said company all land damages and purchases of real estate (excepting the depot grounds in the city of Portland, heretofore purchased of C. Q. Clapp & Brother), which said company have paid for, or are liable to pay, or required to pay, inclusive of all costs incident thereto; and also for all that shall be requisite to finish and complete the said road to its western terminus, according to the full meaning of the original design of the charter and of the said company, and as well for depots as for tracks, and right of way, or location, and save said company harmless from all payments therefor; also, to pay all other incidental damages, costs, and expenses of locating and constructing said road through, to its western terminus, as fast as, and when the same shall be constructed, and of every name and description, and which said company ought, or shall justly be made to pay in the prosecution of its work, according to all original or proper designs therefor, and at all points along the line; but said company shall cause the location of said road to be made and secured as fast and as economically as practicable for the purposes of said Myers: *Provided, however*, that such expenses shall not include any salary or services, or compensation to any officer of the company, excepting only in the engineer's department, nor any class of personal expenses of such officers.

3d. To furnish all necessary and suitable material for, and to construct complete, including painting, glazing, and other material, and work of all the several depots and station-houses ready for use; also all engine-houses, wood-sheds, watch-houses, water-works and tanks, and tank-sheds or houses, and aqueducts, including one-half part of the depot or station-house in the city of Portland, that pertains to the said railroad company to pay under their contract with the Kennebec and Portland R. R. Company; and at all points on the line, or at the termini of said road, as fully and completely as the same have been hitherto designed, or contemplated, with suitable fixtures and out-houses, or to the extent the same are essential to the convenience of the business and interests of said road company, and upon a scale of dimensions also conforming thereto, and not contemplated by said original contract, to be adjudged and determined by the concurrent direction of the president and engineer of the road for the time being, or, on their disagreement, by the decision of the Board of Directors.

4th. To furnish and supply, of the best material and workmanship, all engines and tenders, passenger, baggage, and freight and dirt cars, and working apparatus pertaining thereto, essential to the complete equipment of the road to run, or operate the same, for one year

(repairs excepted) from the completion of the road; the whole to be upon the scales and denominations that shall be determined by the president and engineer of the road for the time being, or, on their disagreement, by the decision of the Board of Directors.

5th. To incur and pay the expenses of every description of real and personal property, and of material and labor essential to the entire line and completion of the road, as aforesaid, for running order contemplated by the charter, and by the said original agreement, and within the usual purposes of such an enterprise, incurred, or to be incurred by said contractor, or by said directors until such completion, excepting the expense and compensation of the Board of Directors and other officers and agents of the company not pertaining to the engineer's department; and excepting office rents, fuel, and supplies for such officers or agents of the company; excepting, also, all liabilities of the company to pay interest, or dividends on stock paid in, and which may be chargeable to construction account, or for any other indebtedness.

6th. To perform so much of said work and labor as shall be requisite to open said road between the depot in Portland and the station-house in Gorham, and complete the depots, for running and ordinary business purposes, on or before the first day of December next, by such temporary, if not complete finish of all parts thereof, as shall be acceptable for this purpose to the engineer and Board of Directors, and to insure the completion of said division of the road, which shall be designated the first division for the purposes of this contract, in all its parts and requisites, within a reasonable time thereafter.

7th. To proceed with and complete either of the other divisions of said road which shall be required by the Board of Directors within the shortest period practicable consistent with economy, as soon after said directors shall notify said Myers of their readiness to furnish the amount of cash means belonging to said company to furnish for such division, pursuant to the provisions of this contract hereinafter contained; said other divisions of the road shall be from Gorham to Saco River, and denominated No. 2; from Saco River to Alfred, and denominated No. 3; from Alfred to the western terminus, and denominated No. 4.

8th. And it is agreed, and hereby covenanted by said railroad company on their part to pay to said J. G. Myers, or his assigns, for the performance of said several undertakings as herein specified, and in complete fulfilment and discharge of the obligations and agreements of this road company created in and by said original agreement and explanatory amendment with J. G. Myers & Co., whose assent and concurrence in these premises shall also be furnished, as follows, to wit: the sum of thirty-two thousand dollars per mile, measuring from the eastern terminus of said road to the station in Gorham, which sum shall be payable and paid as follows, viz: for all work performed and material furnished under said original contract with J. G. Myers & Co. up to the first day of August current,

a full settlement shall be made as heretofore estimated monthly, and according to pre-existing contracts, but the reserved ten per cent. shall be included and paid; and for all lands purchased by stock heretofore, said Myers shall be credited and charged therefor to his apportionment of stock; but for all lands paid for, or secured to be paid in cash, said Myers shall be charged as cash paid, and credited in estimates for the same; and for the depot in Portland, payable in bonds of the company, said Myers shall be credited in estimates, and charged to his apportionment of bonds; and for all such work on said division, and as the same shall progress from said first day of August current, payment shall be made at the rate of fifty per cent. in cash and twenty-five per cent. in the six per cent. bonds of the company hereafter described, and twenty-five per cent. in stock, reserving one-half of the stock as indemnity for the fulfilment of this contract until said division of said road shall be completed.

9th. For all work performed, equipment and material furnished, or lands paid for, or which shall be performed, or furnished, or paid for by said Myers or his assigns beyond Gorham station, or any section of said road, in fulfilment of said original contract and of these premises, the payment shall be made to said J. G. Myers, or his assigns, as follows, to wit, at the rate of twenty-seven thousand and five hundred dollars per mile; thirty-three and one-third per cent. in cash on the return and adjustment of each monthly estimate of the engineer, a like sum in bonds of the company hereafter described, and a like sum, reserving one-half thereof for indemnity, in the stock certificates of the company. The monthly estimates shall be governed by the same gradation of actual expenditures as heretofore, and the payment to be made upon such estimates of actual expenditures; and when the whole road and work and material, to and inclusive of the station-houses, on either division beyond Gorham, shall have been completed within the meaning of this contract, and equipped, the whole of said cash payment, equal to thirty-three and one-third per cent. of the sum of twenty-seven thousand five hundred dollars per mile, shall be made to said J. G. Myers and his assigns. And in like manner, and at like times with said cash payments, bonds of said company shall be issued, secured as hereinafter set forth, to said J. G. Myers or his assigns, to an amount corresponding to the amount of cash payments so made, or becoming due and payable, and at the same time, and in like corresponding amounts with such cash payments, certificates of stock of said company shall be issued to said Myers or his assigns, equal in all these apportionments to the aggregate aforesaid of twenty-seven thousand five hundred dollars per mile, in complete discharge of said company upon this and said former contract, so far as the same pertain to such division of the road, said payments being one-third of twenty-seven thousand five hundred dollars in cash, one-third in bonds hereinafter described, and one-third in the stock of said railroad company. But on a final completion of all the divisions of the road as herein con-

templated, the sum of two thousand dollars per mile, on the distance between Portland and Gorham, shall be refunded and allowed as so much paid by the company towards the last division that shall be completed, and reducing accordingly the rate of twenty-seven thousand five hundred dollars per mile for such last division.

10th. For any division of said road beyond said Gorham Station, which the directors of said company shall at any time hereafter notify said Myers, or his assigns, of their readiness to have constructed, and to furnish the payments therefor in the ratio of cash, bonds, and stock, as the work shall progress, specified above in relation to any such other division of said road, the said J. G. Myers hereby agrees and binds himself to proceed, without delay, to build, complete, and equip it, in manner aforesaid, and in full compliance of, and with so much of this agreement and undertaking as pertains to such division. But neither said directors or company shall be bound to proceed with the work, or any other division besides No. 1, prior to their being able to obtain, by due diligence and exertion, in good faith for the purpose, bona fida and reliable subscription to the capital stock of said road, equal to the cash payment aforesaid required to compensate and pay for the construction, completion, and equipment of the same, as herein contemplated. But said railroad company shall be bound, and hereby binds and obligates itself to proceed in said work, in each of said divisions, as soon and fast as such cash subscriptions, that are reliable and available, shall be obtained or obtainable by due diligence, or shall be furnished by said Myers or any other party; and in case either party to this contract shall fail unreasonably, or by negligence or design, or from any other cause, to perform and make good his or their undertaking to and with the other party, within the true meaning and intent of these premises, then this and all previous contracts pertaining to the construction of said road shall, upon notice and at the option of the other party, be null and void thereafter, and of no effect.

11th. It is further agreed, as provided, by and between said parties, that all bonds that shall be issued by said railroad company, pursuant to and for the execution of this contract, shall, on the completion of the road to Gorham, be secured by mortgage of all the real and personal property of said company, except the depot grounds and depot in the city of Portland, and so much of the road-bed, track, location, and buildings as shall belong to the Kennebec and P. R. R. Company, at and between Morrell's corner and the depot in Portland, according to the joint contract of said K. and P. Company with the York and Cumberland Railroad Company, and freed of all other and all prior incumbrance or lien whatsoever, except existing bonds to indemnify the present liabilities of the directors, which mortgage shall be conditional for the fulfilment of the obligations of such bonds, as the same shall mature; and no other indebtedness shall be created by said company to effect the credit of said bonds, or prejudice their priority of payment, or acquire any concurrent

lien upon the property so mortgaged: *Provided, however*, that in case of the non-fulfilment of this contract by said Myers or his assigns, or of its becoming null and void from any cause, prior to the issuing of the complete amount of bonds contemplated or requisite for the completion of said road through to its western terminus, under and pursuant to this contract, nothing herein contained shall preclude the issue of a like amount of such bonds as is herein contemplated, to any other party inclusive of those which may have been issued pursuant to this contract, to effect such completion and equipment of the road, and to take equal concurrent and like lien and security under said mortgage, upon all said property, as if issued simultaneously with such prior bonds, and to said Myers or his assigns: And it is further mutually stipulated and agreed by said parties, that the aggregate stock issued, or to be issued by said company, prior to the completion of said road, as contemplated in and by these premises, shall not exceed the sum that shall be actually necessary to meet and defray, beyond what may be the income of said road company, the ordinary current expenses of the said company not provided for by this and said original contract, and beyond what may be needful to fulfil this and said prior contract; and the western termination of said road shall be decided upon and located as soon as may be, consistently with the interest of the company, under and pursuant to the power already vested in the president of the company for that purpose.

12th. And it is further mutually agreed by said company and said Myers, that beyond the payment of the fifty per cent. of cash towards the completion of said road to Gorham, said company's credit shall be loaned to said Myers, guaranteed by the directors of the road personally, to an amount not exceeding in all the sum of thirty-five thousand dollars at any one time, to be continued or renewed from time to time, for a period of two years after the completion of the road to Gorham, but only as the same may from time to time be indispensable to said Myers' progress in the completion and equipment of the road to Gorham; and for the indemnity and full security of the company or of the directors whose guaranty shall be thus given, an amount of bonds to which said Myers shall be entitled for work previously executed, in performance of this contract, equal to twenty-five per cent. greater than the amount of credit so loaned, shall be issued and deposited with the treasurer of the company, and charged to said Myers in part payment of this contract for the benefit of such guarantors of credit, and to be disposed of at the loss and expense of said Myers, at the end of the time of such credit, in case the same shall not be by him satisfied and extinguished.

13th. And on the completion of said road to Gorham, said Myers contracts to take a lease of said division of the road, and of each successive division of said road that shall be completed, until the whole road shall be completed to the western terminus thereof, including all the depots and equipment thereof, and pay therefor in

quarter yearly payments, at the rate of six per cent. per annum on the amount of the actual cost of the same to the company, and to keep said road in good repair, together with all the equipments thereof, and to return and redeliver the same in good condition and repair when such lease shall terminate, and to save the company in all respects harmless against all damages, costs, or other losses arising from the use or operation of the road or of its appurtenances, by, through, or under him. But such lease shall be conditioned, that in case said Myers shall omit or neglect to fulfil the purposes and use of the said road to the public, as the same shall be prescribed and regulated by the directors of said company, whose supervision and control of the tariff of charges, and rates of fare to the public, and other police regulations, shall continue unimpaired and paramount, and shall devolve upon said Myers the same obligations and responsibilities as would devolve upon said company without said lease; then such lease shall terminate and be at an end, and said company shall resume occupancy, possession, and use of said premises and all the appurtenances thereof, as if said lease had never been made, and this without hindrance or process of law, and all accounts of the earning, expenditures, uses, and statistical details pertaining to the working and running on said road deemed requisite, and that shall be prescribed by the board of directors to be kept for private or public information, shall be kept at the sole charge and cost of said Myers, and be at all times open to the inspection and use of said directors, to the same extent and in the same manner as if such lease were not in force.

Done at the city of Portland, on the day and year aforesaid, in duplicate, by Francis O. J. Smith, President of said York and Cumberland Railroad Company, and pursuant to authority vested in him by said board of directors for this purpose, and by said John G. Myers; as witness our hands and the seal of said company hereunto affixed, and the seal of said Myers hereunto affixed.

FRANCIS O. J. SMITH, [L. S.]
JOHN G. MYERS. [L. S.]

Witness: JOHN M. ADAMS.

The undersigned, J. G. Myers & Co., pursuant to the provisions of the within contract, hereby approve and assent to the same, on the day and year of the within contract.

J. G. MYERS & CO.

Witness: JOHN M. ADAMS.

(*Modified Contract.*)

Be it known, that, by mutual consent of the within named parties, the within contract is hereby so far modified, in respect to bonds that shall be issued and secured by mortgage on the property named in said contract, in payment for the construction and equipment of that

division of said road which extends from Portland to Gorham, as to authorize such bonds to be issued, with coupons annexed, to the amount of ninety thousand dollars, said sum being the limit of twenty-five per cent. of the aggregate cost of the road, equipment, and depots of said division when completed. And said bonds shall be disposed of as follows: twenty-eight thousand two hundred and sixty-eight dollars being the amount estimated and approved as due said J. G. Myers, under said contract, at this date, and the remainder of said bonds shall be delivered by said Myers to Levi Morrell, Esq., of Westbrook, being sixty-one thousand seven hundred and thirty-two dollars; and the same shall be held by said Levi Morrell, on special deposit, for the exclusive security and indemnity of the several and individual directors of said board, against harm and loss, for and on account of their several and respective liabilities as indorsers for the debts of said company; and said bonds and coupons last named shall be subject to be used and sold in payment and discharge of the debts so indorsed, as necessity shall require, and on such terms as the majority of said indorsing directors shall deem expedient. But as fast and soon as said indorsed debts shall be satisfied, either by sale of said bonds or other means of said company, the excess of the same, not needed for such indemnity, or an amount equal to any sum that shall be so satisfied out of any other resources of said company, shall be issued anew, and redelivered to said Myers, or his assigns, in payment of work and material yet to be furnished by him in completion of so much of his said contract as pertains to said first division of said road, as the same shall or would become due and payable to him in case this modification of said contract had not been made. But said contract, in all other respects, shall remain unchanged and unimpaired in every respect.

In testimony whereof, I, Francis O. J. Smith, for and in behalf of the York and Cumberland Railroad Company, and said John G. Myers for himself, have hereunto set their respective hands, making this a part of said contract, as if embodied therein, on this sixth day of February, A. D. 1851, in duplicate parts.

FRANCIS O. J. SMITH,
*Pres. Y. & C. R. R. Co.*

J. G. MYERS.

Witness: DAVID HAYES.

A true copy.

Attest: DAVID HAYES,
*Clerk Y. & C. R. R. Co.*

(*Annual Report*, 1851.)

D.

*Annual Report of the Directors to the Stockholders of the York and Cumberland Railroad Company. Presented August* 10, 1852.

To the Stockholders of the York and Cumberland Railroad Company:—

The directors have the honor to lay before you their annual report, showing the condition of the company and the doings of the directors for the last year. In submitting it, they have presented some statements and suggestions calculated to make known the claims of the York and Cumberland Railroad to confidence and favor.

The road was so far completed to Gorham Station, as to allow the running of trains to that place on the fifth of February, 1851, and since the 8th of that month, trains have been run between Portland and Gorham, though the road is still unfinished. The ballasting of the track has been so far completed as to allow trains to pass over the road at this time, with safety and dispatch.

The whole amount expended by the company, including the expense of depot grounds, depot and engine accommodations in Portland, engineering, and other expenses, according to the books of the treasurer, is, $449,424 81.

| | |
|---|---|
| Amount expended on 1st division . . . . | 380,969 86 |
| " " 4th " . . . . | 68,454 95 |
| Total . . . . | $449,424 81 |

The stockholders are referred to the accompanying report of the treasurer for the items of expenditure of the above aggregate.

The receipts into the treasury have been derived from the following sources:—

| | |
|---|---|
| Assessments paid on stock . . . . . | 218,964 74 |
| Kennebec and Portland Railroad Company on account of joint track . . . . . | 28,220 93 |
| Bonds sold . . . . . | 144,760 00 |
| " pledged . . . . . | 22,200 00 |
| Working expense account . . . . . | 1,405 22 |
| Buildings sold and rent . . . . . | 1,203 12 |
| Interest on bonds . . . . . | 330 81 |
| Bills payable . . . . . | 32,239 99 |
| Total . . . . | $449,424 81 |

The whole No. of shares of capital stock standing on the company's books is 6,117.

| | |
|---|---|
| Collected on the above . . . . . | 218,964 24 |
| Balance due on stock . . . . . | 86,885 26 |

The larger portion of this amount may be relied on as available means.

| | |
|---|---|
| The amount credited to the working expense account as the earnings of the road to July 1, 1852, is . | 15,637 98 |
| Running expenses . . . . . | 14,132 76 |
| Balance of working expense account . . . | 1,505 22 |

This account shows only the cash receipts credited thereto, for passengers and freight.

The expenditures charged in this department cover all the expenses of repairs of locomotives and other items, while the company have been finishing the road. Gravel trains have been run in connection with passenger trains, and a large credit is justly due from the construction account as "net earnings" of the road. The construction account has been charged during the past year with the actual expenditures paid out by the company therefor; but allowing to the company, the same compensation which would have paid the contractor for the same service, and a large item is earned or saved by the company.

The stockholders are generally aware of the unfortunate condition of the road, and of the company's affairs at its last annual meeting. The contractor abandoned his work in June, 1851, leaving every portion of the line in an unfinished state, so that in August last, it came into possession of the present board, subject to all the discredit which its previous history had entailed upon it.

The directors were compelled to subject the passenger trains to the service of drawing gravel cars, and in this way the road was put in working condition without interfering with the ordinary running of the cars.

While, therefore, the working expenses of the road, under these unfavorable circumstances, have been fully paid by its earnings, the road has been improved to the amount of many thousands of dollars beyond the amount of all the expenditures paid out therefor by the company.

It is proper, in this connection, to remark, that $1,237 21 of amount charged in the working expense account, was for repairs on locomotives. The two locomotives furnished by the contractor, Mr. Myers, for which he was paid the sum of $9,235 00 were both second-hand engines, one of which, charged at $6,000, has required constant repairs, and has been unfit for use most of the time. With new or serviceable engines, almost the entire cost of locomotive repairs would have been saved.

Trains have been run with entire regularity between Portland and Gorham, and in the summer months four trains daily, each way. From the opening of the road in February, 1851, to July, 1852, 68,056 passengers have been carried over the road without the oc-

currence of a single accident. The line from Portland to Gorham has been less blocked with snow than any route within our knowledge, owing to the fact that the line runs in the direction of the winds which prevail during the winter; so that the track is but slightly obstructed by drifts. The facility of operating the road in winter, resulting from this exemption, forms an agreeable contrast to the history of other roads in our vicinity.

The report of the investigating committee, appointed by the stockholders at the last annual meeting, was printed and distributed in October last. Its publication had the effect to materially aid the credit of the company. The subsequent statements of the directors and treasurer, printed and circulated among the stockholders, placed the financial history of the company in its true light before them.

The mortgage to Toppan Robie and *als.*, trustees, authorized by vote of the stockholders, October 15, 1851, has been duly executed and recorded, and the bonds prepared for issue.

The old issue of bonds to the contractor has been principally taken up with bonds under this mortgage.

In order to a full understanding of the bond account, and of the condition of the mortgage, it may be proper to explain the difference between these two issues of bonds.

The instrument in the nature of a mortgage to John G. Myers, dated February 6, 1851, was so ambiguous in its terms, and so defective in all its provisions, which looked to the attainment of satisfactory remedies under it, that, with the advice of counsel, it was superseded by a proper instrument, containing in simple terms the appropriate remedies on failure of the company to pay their bonds and coupons at maturity. Besides this, a portion of the bonds issued to the contractor were made without coupons annexed, with a promise of interest semi-annually in the body of the bond. Coupons for interest, printed on a separate sheet, were issued, though not referred to in the body of the bonds.

The treasurer was compelled, therefore, to require each payment of interest to be specially endorsed on each bond, to protect the Company from a double payment of the same.

The imposition of this labor upon the bondholders, and upon the treasurer, so unusual and so onerous to both, materially affected the negotiability of these bonds. The directors, therefore, under the circumstances, thought it advisable to exchange their new bonds for the old issue.

The old bonds are thereby all taken up and exchanged, with the exception of $15,500, an amount so trifling as not to affect the mortgage security in the hands of the trustees. We have reason to suppose that the old bonds will be gladly exchanged.

5. To further simplify the accounts of the treasurer, and place all the bonds of the Company on the same basis and under one issue, an arrangement has been made with Messrs. C. Q. & A. W. H. Clapp, to take bonds issued under the mortgage to Messrs. Robie and the

trustees for the debt due them for the depot lot in Portland, and for building the depot; the original purchase of the lot was secured by an issue of bonds for $6,360 on 99 years, secured on the depot lot by their conditional deed, and the pay for the building was secured by an issue of $6,000 of bonds, due one-half in 10 years and the other half in 20 year. These bonds have all been taken up by the Company with the new issue on 20 years at par, so that the bond account as shown in the treasurer's books includes $12,360 for the depot lot and depot in Portland, which in former statements were a separate item of charge.

To discharge the floating debt of the Company, shown in the treasurer's report of last year to be $95,416 75, the directors offered the mortgage bonds, issued to Messrs. Robie and *als.*, trustees, at 15 per cent. discount from the face, at the rate of 85 cents to the dollar. This discount makes a large show of expenditure, but the condition of the money market and the credit of the Company in October last, left us no other alternative but to sell the bonds at the rate above named, or allow suits against the Company. Even at this rate the creditors were at first slow to take them. The confidence shown by the directors, in purchasing largely of these bonds, soon gave them credit in the market.

After the payment of the floating debt, which is now reduced, according to the treasurer's account, to the sum of $32,339 99, the bonds of the Company will probably advance and command as high a price in the market as those of other roads in good standing. It may be proper to remark that the floating debt of last year was made up in part of moneys raised on the private endorsements of the directors and advanced to to the contractor, for which they held certain bonds as security. Mr. Myers was notified and requested by the endorsing directors to comply with the conditions of the agreement therefor and receive said bonds, which he failed to do, and the directors have disposed of the same in accordance with the terms of the contract.

Another difficulty existed affecting the sale of the bonds at the time of their issue; certain parties, other than the present board, claimed to be directors of the Company; their pretensions were kept up by an application to the Supreme Court for a *quo warranto* against the present board, which application was refused by the Court after a full hearing.

Meanwhile, John G. Myers brought a suit in the Supreme Judicial Court of Maine, against the Company. Notice was immediately given him and his counsel, of a desire for a speedy trial by the Company. After repeated motions by his counsel for a continuance, at the last November term of the Court, in Cumberland County, Mr. Myers submitted to a nonsuit, and the action was dismissed from the docket. A new suit was afterwards instituted by M. Myers, in the United States Circuit Court, he claiming at that time to be a citizen of Massachusetts. At the last April term of the Court a plea in abatement

was filed, and the right of this Company to appear, by the present Board, was questioned by the counsel of Mr. Myers.

The decision of the Court, quashing the plaintiff's suit, is understood to have judicially established the right of the present Board to the possession of the Company's property, and to have disposed of all questions of authority on the part of the directors to execute said mortgage and to manage the affairs of the Company.

The value of these decisions to the credit of the Company is too well known to need further comment on our part. The bonds of the Company have been sold in the market at the rate of 85 per centum, in payment of the Company's indebtedness, which is now reduced to a sum too insignificant to affect its credit.

To provide for the more pressing wants of the treasury, finish the road to Gorham, build the bridge across South street in that village, and provide the necessary buildings for the Company, so as to ensure the operating of the road in the winter, the directors advanced money, taking as security bonds of the Company in pledge at $60 for the $100, redeemable at the pleasure of the Company within one year, by paying the debt with interest at 6 per cent. The treasurer's account exhibits the amount thus pledged to be $22,200.

At that time the bonds could not be sold to advantage. The directors entertain no doubt of the ability of the Company to redeem said bonds with the means of said Company within the time limited therefor, into whatever hands the management of the Company may fall. Raising money on their private security, or advancing it, at six per cent. interest without other charge, justified the directors in making these advances secure.

On the twelfth day of September, 1851, the Company advertised for proposals for building the road. The proposal of John M. Wood, Esq., the most available offer submitted to the Board, after some modifications, was accepted, and a contract entered into with him for building the road, upon terms which were regarded, under all the circumstances, as exceeding favorable to the Company.

The performance of this contract by Mr. Wood was made subject to certain conditions requiring the payment of the floating debt, which conditions have been performed, and the contractor has made rapid and satisfactory progress with the work of construction between Gorham and Saco River. The work of grading has been in progress over the whole line to Saco River, the iron and other material are purchased, and the opening of the road to that point the present fall, and before the setting in of winter, is now made secure. The land damages have been in part adjusted through the agency of Hon. Mr. Robie, to whose management this service was intrusted by the Board, and from the general good-will manifested toward the enterprise we confidently rely upon an early settlement of the claims of the land owners at reasonable rates, as soon as their farm crossings are provided. The fencing of the line is in progress, under the charge of

Daniel Appleton, Esq., so that every assurance is given to the land owners that their fields shall be properly protected.

As soon as it became known that Mr. Wood had taken the contract for the building of the road, the credit of the Company gradually became established, and the ability and success with which he has carried forward the Atlantic and St. Lawrence R. R., have given him a reputation which has had a most salutary influence upon the credit of this Company. It only remains for the stockholders to fully appreciate the value of their present investment to secure from them the means now required for its entire completion.

No railroad terminating in Portland, and in fact no section of any railway in Maine, of equal length, has shown any results in the way of business so soon after it was opened as those witnessed on the York and Cumberland Railroad over its present line to Gorham. Mr. Morton, in his elaborate report upon the York and Cumberland Road in 1849, estimated that the number of way passengers would reach 75,000, and the through passengers 45,000 annually, after the completion of the entire road, an estimate regarded by many at that time as exaggerated.

The return of the superintendent shows that on this short section of 10.73 miles, or one-fifth of its length, the road has already carried 50,322 passengers during the last year, or at the rate of over 4,995 passengers per mile of road run.

Short lines of railway are compelled to encounter far greater competition, in proportion, than long ones, and the expense of operating them is proportionally enhanced. The increased expense of operating the road the additional distance to Saco River, will be comparatively trifling, and we may confidently predict a relative increase of business, especially of freight, on its completion to Saco River, and that the line will become a paying one soon after it shall be opened to that point.

We give below a table showing the comparative amount of travel on the leading railways in Maine, and the average number of passengers per mile of road in operation :—

| Name of Road. | Length of line. | No. of passengers last year. | Average No. per mile. |
|---|---|---|---|
| York & Cumb., | 10¾ | 50,322 | 4,995 |
| At. & St. Law., | 91 | 124,825 | 1,372 |
| Ken. & Portland, | 52 | 93,943 | 1,803 |
| And. & Kennebec, | 55 | 80,925 | 1,524 |
| P. S. & Portsmouth, | 51 | 216,869 | 3,943 |

This comparison is presented by way of illustration, and not as showing conclusively the comparative value of the different lines. But it may be proper to remark that the Atlantic and St. Lawrence R. R., according to the report of its treasurer, in July, 1849, carried but 68,445 passengers during the previous year, with its own and its connecting lines open to North Yarmouth, July 20, 1848 ;

to Danville and Lewiston, Dec. 4, 1848; to Mechanic Falls, Feb. 19, 1848. During the year ending July 1, 1850, the Atlantic Road carried over its 47¼ miles 155,256 passengers, including those brought by and delivered to the then connecting lines, embracing the Androscoggin and Kennebec, the Portland and Kennebec, R. R., and the Buchfield Branch. The aggregate of the lines which furnished those passengers was equal to 128 miles. Connected with the Atlantic Road, the lines which furnished 124,825 passengers over it during the year ending July 1, 1852, are equal to 159 miles.

These comparisons are made, not for the purpose of undervaluing that great enterprise, upon the success of which the hopes of our State have been so strongly concentrated, but for the purpose of placing the claims of the York and Cumberland Railroad in their true light before the stockholders. The energies and the capital of Portland, applicable to railway enterprise, have been devoted almost exclusively to the consummation of the line to Montreal. We have seen and felt that the successful accomplishment of that great work, to the aid of which every man in Portland is committed, will soon create such additions to its capital that other lines will now receive that aid which its wider experience and better judgment shall approve.

Our line penetrates the most densely populated agricultural portion of the State, and no line of railway extending into the interior, remote from the competition of sea or river navigation, touches so many available resources for business.

No line of railway in the country will touch, in the same distance as that from Portland to Saco River, the same amount of available water-power, in convenient proximity to a good seaport and a large market. Almost the whole water-power of the Presumscot, with its 15 distinct falls, amounting to 230 feet in all, from the outlet of Sebago Lake to Portland, is within striking distance of your line.

The great amount of available water-power at Bar Mills, where the road is to cross the Saco River, and at Salmon Falls, one mile below the crossing, must make this an important locality for business. Following up the Saco above Bar Mills, a succession of waterfalls is encountered within the next 20 miles, greater than the entire water-power of the Merrimac between Lake Winnipiseogee and tide-water.

It seems proper in this connection to refer to another movement likely to be carried out, and to affect still more favorably that portion of our road now in operation. Enterprising merchants have just established an extensive ice trade from Portland. These parties assure us that no point upon the Atlantic seaboard afford such facilities for ice as Sebago Lake. With the approbation and assistance of the Directors, they obtained a charter at the last session of the Legislature, for a branch of our road to Sebago Lake.

By extending a branch line a distance of about eight miles it will connect directly with the steamboat navigation on Sebago Lake, and the streams and ponds above for thirty miles distance, whereby will

be secured to your road a most valuable travel and traffic which is now turned in another direction. A large portion of the travel to the White Mountains would be most certainly secured thereby in summer, and in addition to the large local business drawn upon it, the new trade opened in winter by the exportation of ice from the Sebago to Portland would employ an immense amount of tonnage.

The export of ice just commenced in our city is already a most valuable business, and it is not saying much to predict that within five years from the opening of a branch of the railway to the lake, that Portland would export more ice than any other port in the country. The superior quality of Sebago ice, and its unfailing supply at all times, invite the investment of capital to an extent quite beyond the present amount embarked.

The export of ice from the port of Boston has been as follows:—

| Years. | Tons exported. | Years. | Tons exported. |
|---|---|---|---|
| 1845 . . . | 48,422 | 1849 . . . | 66,308 |
| 1846 . . . | 57,293 | 1850 . . . | 69,623 |
| 1847 . . . | 54,625 | 1851 . . . | 99,578 |
| 1848 . . . | 57,507 | 1852 to July 1 . | 60,411 |

Ice could be brought from Sebago Lake by railway over our level or descending grades very nearly as cheaply as coal is carried over the Reading Railway, or at the rate of 5.3 mills per ton per mile. On the completion of your railway to the lake, it could be delivered at the wharves in Portland more cheaply than it now can be hauled by teams from the canal basin.

The branch line to the lake might be extended in such direction as would permit its extension into the Saco Valley near Steep Falls in the most direct line to the White Mountains.

From Saco River to Alfred the line has been carefully surveyed, and the work will be put in progress as soon as the means of the company will allow. Between Alfred Village and Great Falls operations along the line were suspended by the abandonment of the work by the contractor before the last annual meeting.

In forming a connection with the Great Falls and Connay R. R. at the Village of Great Falls, it was found expedient to occupy one side of the highway in the Town of Berwick in approaching Great Falls village. This was done with the belief that the use of the street in the manner proposed would better accommodate the business of that place than any other location that could be adopted, and be fully satisfactory to all parties. A large expenditure was made on the bridge across the river, and the work was in active progress when the inhabitants of Berwick obtained an injunction against the company, restraining them from occupying the street. No arrangement has yet been made for the adjustment of the difficulty except by making a location outside the line of the street and near the buildings. John A. Burleigh, Esq., has had full authority to act in the premises,

and is of opinion that the consent of the inhabitants of Berwick will be given to the necessary use of the street, whereby any change of route may be avoided.

Application was made to the legislature for an enlargement of the time in which to complete the location of the line of our road, which time has been extended till the end of December, 1853.

The financial condition of the company, on the completion of the line to Saco River, may be summarily stated as follows:—

Division from Portland to Saco River 18½ miles of road, easting, including engineering, land damages, depots, and equipments, about $600,000 00.

| Which will be paid for by amount received on capital stock, | $275,000 00 |
|---|---|
| Ken. and Portland Railroad, | 28,220 93 |
| Rents, | 235 87 |
| Property sold, | 967 25 |
| Interest, | 330 81 |
| Bonds sold, | 144,760 00 |
| Bonds to be sold, | 130,000 00 |
| Bills payable, say | 20,485 14 |
| | $600,000 00 |

In the foregoing estimate we include the stock taken by the contractor. We rely upon collections from the stock subscriptions to pay the balance due for land damages, redeem the bonds pledged, and reduce our floating debt to $20,485 14. If the stock subscription or the principal part of it is promptly paid, a still better exhibit will appear.

The foregoing estimate covers the large expenditures for depot grounds, for building the spacious and elegant depot in Portland, the cost of engine houses, surveys for the entire line, interest paid stockholders, and discount on the bonds sold. Most of the foregoing expenditures are a fair charge on the whole road, so that the cost of the line, when finished, will not exceed $30,000 per mile.

While the directors have kept steadily in view the great purpose of its undertaking, a through road from Portland to Boston, they have sought to bring to notice, in aid of the company, the local advantages of the route.

The trunk railway between Portland and Boston is yet destined to be the line of your road as now located, or in the general direction thereof, in continuation of the Boston and Maine Railroad.

The truth of this remark will be assented to by all who are familiar with the geography, and with the history of railways in Maine.

A charter was granted March 30, 1836, for the purpose of carrying out this idea under the name of "The Maine, New Hampshire, and Massachusetts Railroad Corporation." Had the subject of rail-

ways been as well understood in 1837 as at this time, the rival charter to the Portland, Saco, and Portsmouth Railroad Company would not have been granted without more careful restrictions, and the history of railroads in Maine would have been different. The hostility to railroads in Maine, from 1837 to 1845, is clearly to be traced to the proceedings of the rival companies above referred to, which are too well known to need comment.

Instead of carefully guarding the rights of our own people and protecting the grant first made, the legislature of Maine, through the influence of the friends of the rival line which was being extended from Boston east towards Maine, practically surrendered to foreign corporations the control over the travel of the State. The result of this state of things was soon felt in Maine, and postponed for years the accomplishment of our most valuable public enterprises.

The city of Portland, having unrivalled facilities for manufactures in her immediate vicinity, and with commercial advantages greatly superior to Boston, holding a position as a seaport which made it the natural market for almost the entire trade of New Hampshire and Vermont, sat quietly by and saw the trade not only of those States, but of the western part of our own State, drawn to Boston by roads which we had chartered. While we granted to foreign corporations the right to build roads into Maine, as feeders for their own roads, and as absorbents of the business of Portland, we secured nothing as an equivalent in return, and from 1836 to 1845 Massachusetts drew much of our business and population to her own cities. Nothing can so strikingly display the influence of railroads in the growth of population and wealth as a simple comparison of the progress of Maine and Massachusetts for the last fifty years.

POPULATION.

| | 1800. | 1810. | 1820. | 1830. | 1840. | 1850. |
|---|---|---|---|---|---|---|
| Maine, | 153,719 | 228,705 | 298,335 | 399,455 | 501,793 | 583,626 |
| Mass., | 423,245 | 472,040 | 523,287 | 610,408 | 737,699 | 994,271 |

DECENNIAL INCREASE—RATIO PR. CT.

| | 1800. | 1810. | 1820. | 1830. | 1840. | 1850. |
|---|---|---|---|---|---|---|
| Maine, | 57.1 | 50.7 | 30.4 | 33.9 | 26.2 | 16.6 |
| Mass., | 11.7 | 11.5 | 10.9 | 16.6 | 20.8 | 34.8 |

Up to the year 1835, there was a large immigration into Maine from other portions of New England. From 1835 to 1840, the tide of emigration was turned, and a very large and most valuable portion of our population emigrated between 1840 and 1845. This was clearly the result of railway improvements in Massachusetts, and the absence of similar exertions in Maine.

If the city of Portland had at an early period extended a line of railway into the heart of York County, as far as Alfred, on the most

available route between Portland and Boston, the Boston and Maine Railroad would have joined it at that point, thereby forming a trunk line to Boston; and the railway history and policy of the State would have been changed. Portland is the natural market of all those portions of New Hampshire and Vermont which lie north of a line drawn due west of it, and of the whole country within striking distance of such a line on the south. No one can doubt that as soon as a connection could have been formed with the Boston and Maine Railroad, that our great line, turning toward Lake Champlain, would have been readily undertaken, and long before this time have been successfully carried through. Portland has an advantage over Boston, in being naturally more accessible as a seaport, and having a greater extent of country, of equal resources, within a circle of the same extent.

The city of Boston, having brought Maine, in common with New Hampshire, apparently into commercial subjection by her railway system, made no further effort to extend railway facilities into Maine. Instead of aiding in extending a line of railway from Portland to Montreal, every obstacle was thrown in the way of its success. That city is already feeling the consequences of her policy. If she had thrown her influence and her capital upon lines of railway east, and aided enterprises which would have promoted industry and built up manufactures in Maine, she could have secured the trade of Maine forever. Instead of this, she has expended millions of money in building roads which are now carrying trade to New York which formerly came to Boston, while her unceasing hostility to our railway system, as projected in 1844 and 1845, has alienated the former regards of our people, and turned their attention to other sources of supply. Still, an immense and increasing travel and traffic will continue over the lines of railway between Portland and Boston, and the parties owning these lines are interested in any enterprise calculated to promote the growth of business in Maine.

It is believed that the great body of the stockholders in the Boston and Maine Railroad are not aware of the impositions which have been practised upon the people of this State by those having charge of its negotiations, or of the tenure by which they now hold their charter. The original charter of March 30, 1836, authorized the building of a railroad "from Portland, through the villages of Sacarappa, Gorham, Alfred, &c., to Great Falls." It declared that unless the line was located by Dec. 31, 1846, "in either case, the charter shall be null and void." No subsequent act has relieved the company from the effect of the foregoing conditions. The act of April 2d, 1841, authorizing the change of route, so as to enable the company to connect with the Portland, Saco, and Portsmouth R. R. at South Berwick, expressly required them to build "the line described in the act to which this is in addition." There are other requirements in their charter which makes it subject to legislative control.

While the right to build remained open, they constantly threatened the Portland, Saco, and Portsmouth Railroad with a competing line.

After the change in our legislative policy in 1845, the directors of the Boston and Maine Railroad Company professed their willingness and determination to build a new line into Portland, if a suitable charter could be obtained therefor. The charter of 1836, under which they organized, being subject to the control of the Legislature of Maine, they preferred one containing the more liberal grants of our recent charters.

Under these circumstances, they induced certain parties in the counties of York and Cumberland to obtain a new charter with liberal provisions, giving implied assurances, if not an absolute promise, that under it they would build a road into Portland. The Portland, Saco, and Portsmouth R. R. Company resisted the grant of this charter in 1846, but the united voice of York and Cumberland could not be resisted. It was claimed as the virtual renewal of the original charter of 1836, and granted upon that ground.

After this charter was obtained, the line was surveyed at the expense of the Boston and Maine Railroad Company, or at any rate the expense was paid by its directors, and the most unqualified avowal of a determination to build it was given out. With this charter under their control, they forced the Portland, Saco, and Portsmouth Railroad to the acceptance of their own terms of connection.

Obtaining this charter under such circumstances, a decent respect to the corporators, whose names they had used, required that they should have asked their consent, as well as that of the Legislature of Maine, before concluding an agreement hostile to the interests of the York and Cumberland Railroad.

Instead of fulfilling their engagements, the Boston and Maine Railroad actually entered into a contract for a perpetual lease of the Portland, Saco, and Portsmouth Railroad, jointly with the Eastern Railroad, forfeiting their plighted faith to the corporators of the York and Cumberland Road.

The consummation of this bargain, made in face of the right of the corporators of the York and Cumberland Railroad, and against the authority of law, aroused a feeling of indignation through the counties of York and Cumberland, and wherever else its history was known, and the friends of the York and Cumberland Railroad successfully resisted for three years the annual application of the three allied companies for legislative sanction of this contract.

At the recent session of the Legislature of Maine, a law was passed, on petition of the directors of the York and Cumberland Railroad, declaring such lease or contract void, and providing appropriate remedies to parties injured. This law goes into effect in six months from the time of its approval, on the 13th day of October next.

How far this law may reach the case, it may be premature in us to say. It was passed in just such form as the directors of this company requested, and will doubtless accomplish all the objects for which it was designed.

The Boston and Maine Railroad Company decline to make any

concession to us, or enter into any agreement giving to passengers over the York and Cumberland Railroad, when built, the right to pass over it on the same terms as those going over the Portland, Saco, and Portsmouth Railroad to Boston. If no satisfactory terms can be made, without further legislative interference, it will be in the power of the State, at the next session of the Legislature, to make its authority respected. Corporations dependent for existence upon legislative favor, and expressly made subject to legislative control, may find that it is hardly wise or prudent to disregard a legislative admonition. The unanimous opinion of the last Legislature is such an expression of the justice of our complaints, that we trust that before another session, satisfactory terms of connection with the Boston and Maine Railroad will be agreed upon.

No claim of injustice can be fairly urged by the stockholders in the Portland, Saco, and Portsmouth Railroad. They took their grant, and built their road long after the date of the charter of the line along our route, and with a full knowledge that our line had not only priority of right, but superior advantages for business. But there is an abundant business to enable both lines to pay.

The passengers carried over the Portland, Saco, and Portsmouth road increased from 90,342 in 1843, to 210,622 in 1851, as shown by the following statement of the number of passengers carried:—

| Year. | No. passengers. | Year. | No. passengers. |
|---|---|---|---|
| 1843 . . . | 90,342 | 1848 . . . | 188,498 |
| 1844 . . . | 107,743 | 1849 . . . | 209,478 |
| 1845 . . . | 119,292 | 1850 . . . | 222,283 |
| 1846 . . . | 134,753 | 1851 . . . | 210,622 |
| 1847 . . . | 167,327 | | |

The number for the year ending June 1, 1852, was 216,869. The number of through passengers on the Portland, Saco, and Portsmouth Railroad will undoubtedly be diminished on the opening of our line. The interior lines are, of course, the more valuable. This is shown by the direction of the travel between Boston and Portland. Of the 216,869 passengers carried over the Portland, Saco, and Portsmouth Railroad during the year ending June 1, 1852, 117,370 were through passengers, and 99,499 way passengers. Of the through passengers, 83,135 passed over the Boston and Maine Railroad, and 34,235 over the Eastern Railroad. We believe the York and Cumberland Railroad is destined to command the same proportion of the through business, and will operate upon the Portland, Saco, and Portsmouth Railroad in the same proportion, and to the same extent, as the Boston and Maine affects the eastern road.

The way business of the York and Cumberland, however, is our main reliance. Portland is soon to become the principal market of York County, and of the neighboring towns of New Hampshire. By extending a branch of our road in the most direct line to the Cocheco road, at any point between Farmington and Alton Bay, the

whole region of country dependent upon that line will at once be brought at once some fifty miles nearer by railway to Portland than to Boston. When the line of the Cocheco road shall be extended to a point of connection with the Boston, Concord, and Montreal Railroad, and the lines finished in connection therewith to Montpelier, by the way of Wells River, the whole region of Northern New Hampshire and Vermont will find Portland its most natural, its easiest, and its cheapest market by this route.

Every article of consumption can now be purchased at retail, in Portland, cheaper than in Boston, and there is no doubt of the ability of Portland, within the next two years, to import her own supplies direct from Europe. Her facilities for business are unequalled. With seven miles of wharf accommodations, accessible to ships and lines of railway extending in an unbroken circuit on a level with these wharves entirely around the city, no port on the continent will be enabled to transact its business at so cheap a rate.

Lines of railway, built by the capital of our own people, terminating at Portland, will, at the close of the present year, reach an aggregate of 328 miles in all. These lines have all been opened within the last four years, and are an earnest of what our people can undertake for the future. The great line to Montreal will be finished in June of next year, thereby bringing Portland in direct communication with the St. Lawrence and the Great Lakes. The opening of these roads, so far, has completely revolutionized the opinions of former years, and the Government of Canada has just consummated a contract for a line of ocean steamers between Portland and Liverpool in the winter months, adopting Portland as the Atlantic seaport for the Canadas.

It is impossible to make any considerable addition to the trade of Boston without increasing more largely the expense of transacting business there. It is now found that New York City, with its unrivalled advantages for commerce, has outgrown its conveniences for business, and that the delays of the custom-house, and the expenses of pilotage, dockage, and storage, are diverting business into more accessible ports. It cannot be doubted, that with our extraordinary facilities for commerce, within a brief space of time goods will be entered at our custom-house, shipped to New York by steamer, and placed in store for sale, with more ease and less expense than they are now passed through the custom-house at New York city.

While, therefore, the directors of the York and Cumberland Railroad are devoting their undivided attention to the work of building their line to a point of connection with the Boston and Maine Railroad, securing thereby the accomplishment of a work which for sixteen years past has occupied the attention of the people along its route, they are not unmindful of its important relations to the railway system of New England, or to the future business and policy of Maine. It may claim some share of credit in building up our own capital, and securing the natural advantages of its position. It is quite natural

to suppose that New Hampshire and Vermont would join us in any effort that should be made to extend a line of railway in the most direct route from Portland across both States, thereby giving to the people of each the advantages of a cheaper market.

It has been suggested that upon the completion of our line to Great Falls, and a connection with the Cocheco road, sound policy would require the extension of our line to Concord, opening new facilities for intercourse and business. The distance from Portland to Concord, over the most direct route, would be considerably less than from Concord to Boston. Such a line would bring Portland into still more intimate connection with the trade of New Hampshire, Vermont, and the basin of Lake Champlain, and give us a route thereto, in addition to that by Montpelier.

The whole railway interest of Maine and New Hampshire, and much of that of Massachusetts, is concerned in every effort to increase the means of railway communication with Maine. The opening of the great trunk line between Montreal and Portland is destined to change the course of trade from the valley of the St. Lawrence. The great lines between Halifax and our eastern frontier, and between Montreal and Detroit, are about to be undertaken by English capitalists, and the intercourse between Portland and Boston will furnish abundant business for two independent lines within a very few years. The travel between Maine and Boston will gradually be diverted from the steamboats as railway facilities are extended. Lines of steamboats run to Boston direct from Eastport, Bangor, Bath, and Portland, embracing no less than nine steamers in all, carrying, it is estimated, more passengers than those who pass over the line of the Portland, Saco, and Portsmouth Railway.

We may safely assume that the number of passengers between Maine and Boston is equal to 250,000 annually. Four-fifths of this travel will be carried by railway as soon as the lines are extended to Bangor and Calais. The increased safety and dispatch which the railway insures over any conveyance by water are daily withdrawing passengers from steamboats. We were surprised to find that the popular line of steamers between Portland and Boston annually carries a fifth only of the travel between the two places.

The recent destruction of the steamer Henry Clay, on the Hudson, has caused more loss of life than all the railways of the country the past year, which have carried, during this time, more than fifty millions of people. During the half year ending Dec 31, 1851, throughout the United Kingdom of Great Britain and Ireland, only eight persons were killed through the fault of the Railway Companies while carrying forty-seven and one-half millions of passengers.

The great argument used against our road by its opponents is drawn from the fact that the railways of Maine, running in the direction of the coast, are liable to steamboat competition.

Extend an unbroken line of railway from Boston to St. John, and this line will as effectually compete with the steamboats as the rail-

way between Portland and Boston. As travel increases, so that daily trains may be multiplied and still carry useful loads, they can as effectually drive the steamboats from the coast of Maine as they were driven off the Sound between New York and New Haven by the opening of the railway between those two cities.

In conclusion, the directors beg leave to remark that a subscription of two hundred and fifty thousand dollars, made applicable to the work the present year, will enable the stockholders to celebrate the opening of the entire line at the annual meeting of next year. With 18½ miles of first class road in operation, including as it does over two-fifths of the entire cost of the line, and fully demonstrating its paying qualities, the directors confidently appeal to the stockholders to make one more effort to realize at the earliest day "a consummation so devoutly to be wished."

In behalf and by order of the directors.

JOHN A. POOR,
*President.*

Office of the York and Cumberland R. R. Co.,
Portland, August 2, 1852.

(*Vote of Co. Dec.* 10, 1851.)

Also pl'ff read from said records under date of Dec. 10, 1851, page 312, the following votes:—

"Whereas, certain parties holding notes of the company endorsed by the directors have agreed to exchange the same for bonds of the At. and St. Lawrence R. R. Co. at the rate of eighty-five dollars to the hundred, which bonds this company are making arrangements to procure: Therefore,

*Voted*, That the Treasurer be authorized to take up the notes aforesaid by giving bonds of the Y. & C. R. R. Com'y, and that he be authorized to sign an obligation agreeing to exchange the bonds so disposed of by giving bonds of the A. and St. L. R. R. C'y therefor within one year.

And pl'ff read from said Company's contract with said Wood, dated Jan'y 2, 1852, p. 321 of Directors' Records, the following extract, viz:—

(*Extract from Wood's Contract.*)

"But it is expressly agreed and understood that the said contractor shall not be compelled to commence upon said work until the present floating debt of said Company shall have been funded or exchanged for the bonds of the Company issued at $85 to the $100; and the bonds issued to John G. Myers exchanged for the new issues of bonds under the mortgage to Toppan Robie and others, trustees, or until such debts are so far taken up as aforesaid, and the said bonds exchanged to such an extent that the outstanding debts and bonds issued to Myers shall not materially affect the credit of the Company,

nor exceed an amount the sum of forty thousand dollars in all. The entire amount to be taken up as soon and as fast as the means of the Company will allow."

(*Vote of Co., Feb.* 4, 1852.)

Pl'ff also read from same records, under date of Feb'y 4, 1852, p. 346, the following vote:—

*Voted*, That the bonds issued to Messrs. C. Q. & A. W. H. Clapp, or to be issued to them in payment for building the depot in Portland, authorized by vote of May 13, A. D. 1851, be taken up by an exchange of bonds issued to Messrs. Robie and others, trustees, and secured by the mortgage of said trustees, and that the President and treasurer are hereby authorized to make certificates on said bonds to the effect that they are still secured under the original mortgage given by this Company on said depot in Portland to the said Clapps.

(*Vote of Co., Oct.* 14, 1851.)

Copy of vote of directors quoted on page 260 of their records, and passed Oct. 14, 1851, and read by pl'ff.

*Voted*, That the directors request the stockholders to empower the directors to make and execute to certain trustees, that shall be appointed, a mortgage of the rights, franchises, and property of the Company to secure the payment of the bonds issued by the directors in carrying forward the construction of said road, and to adopt the following vote at the stockholders' meeting, Oct. 15, 1851.

*Voted*, That the president and treasurer be authorized to execute and deliver to such trustees as the directors may appoint, a conveyance in trust and mortgage of all the railroad of this Company now constructed, and as the same shall be further extended to its final completion, including all the franchises and rights of way taken and held for the purposes of said road, together with all the real estate of the Company (except the depot in Portland), and all the personal property of the same appertaining to the customary use and working of said road, with suitable terms and conditions for the security of bonds of this Company of even date of said mortgage, payable in twenty years, with interest semi-annually to be issued by the directors for the construction and completion of the road, amounting in the aggregate to a sum not exceeding seven hundred and fifty thousand dollars upon the full and final completion of the road.

And it was in proof from said records that the stockholders voted the aforesaid authority to the directors, and that bonds in the amount of $750,000 were accordingly created, and a mortgage also made to secure their payment.

The pl'ff also read from said records votes of contract authorized and made with John M. Wood.

(*Vote of Co., Nov.* 1, 1851.)

And pl'ff read from p. 279 directors, under date of meeting holden Nov. 1, 1851, the following vote:—

"*Voted*, That the treasurer be and he is hereby authorized to purchase or exchange at par the bonds of the Company issued to the contractor, signed by Daniel C. Emery, as treasurer, for the bonds of the Company made under the mortgage to Messrs. Robie, Anderson, and Clifford, trustees, paying the difference of interest on the bonds between August and November.

(*Vote of Co., Nov.* 11, 1851.)

Pl'ff also read the following votes from same records, p. 274, under date of Nov. 11, 1851, viz:—

"*Voted*, That the treasurer be authorized to give the Company's note on three months to Messrs. L. Morrell, N. L. Woodbury, and George Warren, for the amount paid by them in discharge of an execution against the Company in favor of John Lamb, and to them security therefor by a pledge of the Company's coupon bonds to the amount of $12 00.

"*Voted*, That the president, Mr. Clapp, and Mr. Morrell be a committee with power to sell a sufficient amount of the bonds of the Y. & C. R. R. Co. to discharge the liabilities of the Company, on such terms, and at such price or prices as they may think advisable.

(*Vote of Co., Dec.* 9, 1851.)

Also pl'ff read from said record, p. 309, under date of Dec. 9, 1851, the following:—

"The president communicates the following report: The committee of the directors appointed on the 11th of November last, to sell the bonds of the Company to an amount sufficient to discharge the liabilities of the Company, report, That they have directed the treasurer to sell said bonds at the rate of eighty-five dollars for the hundred, and that in accordance therewith he has disposed of a portion of said bonds at that rate.

JOHN A. POOR,
CHARLES Q. CLAPP,
LEVI MORRELL.

*Voted*, That the foregoing report be accepted and recorded.

DR. *John G. Myers, Bond Account.* CR.

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| 1851 | | | | 1850 | | | |
| Feb. 17 | To bonds acc'd F. O. J. Smith per order | 1st div. | $3,000 00 | Sept. 10 | By 21st estimate | 1st div. | $8,400 16 |
| " 20 | " bonds to self | " | 20,000 00 | Oct. 10 | " 22d " | " | 5,935 73 |
| " 26 | " " J. P. Rich | " | 2,000 00 | Nov. 10 | " 23d " | " | 5,654 71 |
| May 8 | " " D. C. Emery | " | 3,000 00 | Dec. 10 | " 24th " | " | 3,512 24 |
| June 16 | " " Staples & Bastoe | " | 500 00 | " 10 | " 1st " | 4th div. | 1,215 83 |
| May 22 | " " C. Q. & A. W. H. Clapp for depot | 4th div. | 6,000 00 | 1851 Jan. 10 | " 2d " | " | 877 66 |
| " 22 | " amt. of bonds in Levi Morrell's hands to date | 1st div. | 10,771 30 | " 10 | " 25th " | 1st div. | 2,671 72 |
| June 16 | " do. for month of June | " | 459 45 | Feb. 10 | " 26th " | " | 5,326 25 |
| " 16 | " bonds to Staples & Bastoe | 4th div. | 5,500 00 | " 10 | " 3d " | 4th div. | 3,524 17 |
| July 10 | " " Levi Morrell | 1st div. | 111 97 | Mar. 10 | " 4th " | " | 6,095 67 |
| | | | | " 10 | " 27th " | 1st div. | 2,600 47 |
| | | | | April 10 | " 28th " | " | 2,264 53 |
| | | | | " 10 | " 5th " | 4th div. | 3,722 33 |
| | | | | May 10 | " 6th " | " | 4,600 00 |
| | | | | " 10 | " 29th " | 1st div. | 2,905 49 |
| | | | | June 10 | " 30th " | " | 459 45 |
| | | | | " 10 | " 7th " | 4th div. | 1,720 76 |
| | | | | July 10 | " 8th " | " | 1,261 53 |
| | | | | " 10 | " 31st " | 1st div. | 111 97 |

(76 Leger page.)

DR. *John G. Myers, Bond Account.* CR.

| 1850 | | | | 1850 | | Page | |
|---|---|---|---|---|---|---|---|
| Dec. 18 | To amount to F. O. J. Smith | 130 | $3,000 00 | Sept. 10 | By 21st estimate | 95 | $8,400 16 |
| 1851 | | | | Oct. 1 | " 22d " | 100 | 5,935 73 |
| Feb. 20 | " " yourself | 154 | 20,000 00 | Nov. 10 | " 23d " | 113 | 5,654 71 |
| " 26 | " " Rich | 157 | 2,000 00 | Dec. 28 | " 24th " 1st division | 133 | 3,512 24 |
| " 17 | " " Morrell | 169 | 61,500 00 | | " 1st " 4th " | 133 | 1,215 83 |
| May 10 | " " for depot | 188 | 6,000 00 | 1851 | | | |
| July 1 | " " to yourself | | 15,500 00 | Jan. 16 | " 2d " 4th " | 143 | 877 66 |
| " 9 | " " " | | 4,500 00 | | " 25th " 1st " | 143 | 2,671 72 |
| June 16 | " " to Staples & Bastoe | | 6,000 00 | Feb. 8 | " 26th " 1st " | 151 | 5,326 25 |
| | " " Daniel C. Emery | | 3,000 00 | | " 3d " 4th " | 151 | 3,534 17 |
| | | | | Mar. 10 | " 4th " 4th " | 167 | 6,095 67 |
| | | | | | " 27th " 1st " | 167 | 2,600 47 |
| | | | | | | | 45,824 61 |
| | | | | April 10 | " 28th " 1st " | | 2,264 53 |
| | | | | | " 28th " 1st " | | 3,722 33 |
| | | | | | " 5th " 4th " | | 4,600 00 |
| | | | | May 10 | " 6th " 4th " | | 2,905 49 |
| | | | | | " 29th " 1st " | | 459 45 |
| | | | | June | " 30th " 1st " | | |
| | | | | | | | 59,776 41 |
| | | | | | " 7th " 4th " | | 1,720 76 |
| | | | | June 30 | " 8th " 4th " | | 1,261 53 |
| | | | | | " 31st " 1st " | | 171 97 |

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(*Morrell's Receipt.*)

Received of John G. Myers, sixty-one thousand five hundred dollars in the bonds of the York and Cumberland Railroad Company, secured by mortgage with coupons for interest pertaining thereto, to be accounted for, and for the purposes as specified in his supplemental contract with said company, dated the sixth day of February, 1851.

LEVI MORRELL.

PORTLAND, *February* 17*th*, 1851.

[Copy.]

(*Mortgage to Myers.*)

F.

*Mortgage.*

Know all men by these presents, that we, Francis O. J. Smith, of Westbrook, in the county of Cumberland and State of Maine, President of the York and Cumberland Railroad Company, a corporation created and authorized by an act of the legislature of Maine, passed on the thirtieth day of July, A. D. 1846, as of record will fully appear, and Daniel C. Emery, of Gorham, in said county, treasurer of said corporation, by virtue of the power vested in us for this purpose, by a vote of the stockholders of said corporation, passed at a meeting of said stockholders holden on the fifth day of February, A. D. 1851, as of record will appear, and in consideration of the sum of one dollar paid by John G. Myers, of Portland, in said county, Esquire, the receipt whereof we do hereby, for and in behalf of said corporation, acknowledge, and in consideration of the stipulations contained in the contract of said Myers, hereinafter mentioned, do hereby give, grant, bargain, sell, and convey, for and in the name and behalf of said corporation, unto the said Myers, and his assigns, who shall become the holders of the bonds and coupons hereinafter mentioned, each in the ratio of the bonds so held by him, the franchise of said corporation, with all its privileges and immunities, as the same exists by virtue of said act of incorporation and the laws of said State, together with all personal and real property, and rights of way of said corporation, however situated and bounded, and as the same has been or may be purchased within the counties of York and Cumberland, and for a more particular description of which, reference is hereby made to the registry of deeds in said counties, and the records of said corporation, together with all the buildings, that are or may be situated on said premises, excepting only the depot and lot of land whereon the same stands, situated in the city of Portland, but meaning to include herein all iron rails, road-bed, track, and other structures of said corporation now completed, or in the process of being furnished and constructed, or that may be acquired, and as the same shall be when finished, be the

same more or less, and throughout the whole line of said road, and including all cars, engines, and furniture, that have been or may be purchased by said company.

To have and to hold the aforegranted and bargained premises, with all the privileges and appurtenances thereof, to the said Myers, his heirs and assigns, and to the holders of said bonds and coupons to their use and behoof forever. And we do covenant with the said Myers, for and in behalf of said corporation, and by authority aforesaid, and with his heirs and assigns and the holders of said bonds, which are hereby recognized as transferable by delivery only, that said corporation is lawfully seized in fee of the premises, that they are free of all incumbrances, that it has good right to sell and convey the same to the said Myers and the holders of said bonds in manner aforesaid, and by these presents, and to hold as aforesaid, and that said corporation shall and will warrant and defend the same to the said grantees forever, against the lawful claims and demands of all persons.

Provided, nevertheless, that if the said corporation or their agents or assigns pay to the said Myers or his assigns, who shall become the holder or holders thereof, the amounts specified in the several bonds and coupons for interest pertaining thereto, that shall be issued concurrently with these presents, and such also as shall hereafter be issued by the directors of said corporation, according to, and to satisfy the terms of the contract existing between said corporation and said Myers, bearing date the fifth day of August, A. D. 1850, and as modified in writing on this sixth day of February, A. D. 1851, for the construction and equipment of said railroad, as by reference to said contract, and the records of said company will fully appear; each of said bonds being numbered consecutively, from one to the sum total thereof, requisite for the completion of said road according to said contract, and each being issued only by the previous specific vote thereof of said directors at their meetings duly notified; and if said payments shall be made as the same shall respectively become due according to the terms of said bonds and coupons; and if said contract shall also be fully performed by said corporation in all other respects, then this deed shall be null and void thereafter, otherwise the same shall remain good and in full force.

And it is further provided, and a condition of this deed, that the possession and uses of said premises shall, at all times, remain in the said grantors, so long as payment shall be made promptly and in good faith by said grantors of said several bonds and of the coupons pertaining thereto, as the same shall become due or payable; but upon failure thereof, for the term of sixty days, the holder of said bonds, or any one or more thereof, shall be and hereby is authorized and empowered to take full and complete possession of said premises and mortgaged property, personal and real, rights of way and corporate franchise, without hindrance or process of law, for the

common and joint benefit and use of the holders of all the bonds, so previously issued, and whether payment then be due or not, and in satisfaction thereof; and such holders shall share alike in the disposition and sale of the same for that purpose, by public vendue, on reasonable public notice given thereof to the grantors aforesaid, first deducting from such proceeds all costs and expenses incident to such possession and sale.

In witness whereof, We, the said Francis O. J. Smith, President as aforesaid, and Daniel C. Emery, Treasurer aforesaid, in our said respective capacities, and for the purposes, and in behalf of said corporation, have hereunto set our respective hands and the seal of said York and Cumberland Railroad Company, at the city of Portland, on this sixth day of February, in the year of our Lord one thousand eight hundred and fifty-one.

FRANCIS O. J. SMITH,
*Pres. Y. and C. R. R. Co.*

DANIEL C. EMERY,
*Treasurer.*

Signed, sealed, and delivered in the presence of
DAVID HAYES.

CUMBERLAND, ss., *February* 6, 1851.

Then personally appeared the above named Francis O. J. Smith, in his said capacity of President of the aforesaid York and Cumberland Railroad Company, and Daniel C. Emery, in his capacity of Treasurer of said company, and acknowledged the above instrument to be in behalf of said company their free act and deed.

Before me, DAVID HAYES,
*Justice of the Peace.*

The instrument above copied is indorsed as follows, viz:—

"Cumberland, ss. Registry of Deeds. Received Feb. 11, 1851, at 8.25 A. M., and recorded book 226, page 467.

WILLIAM ROSS,
*Register.*

(*Treasurer's Report.* 1851.)

G.

To the Stockholders of the York and Cumberland Railroad Company:—

The Treasurer of said company, in compliance with the by-laws, respectfully submits the following report of the transactions of the office, up to July 1st, 1851:—

| | 1st Division. | 4th Division. | Total. |
|---|---|---|---|
| Receipts for assessment on shares of capital (each) | $94,104 42 | 16,827 03 | 110,931 45 |
| Receipts amount of stock taken by contractor, as per contract . . | 74,702 00 | 23,027 98 | 97,729 98 |
| Total amount received on capital stock . . | 168,806 42 | 39,855 01 | 208,661 45 |
| Receipts of K. and P. Railroad Company for one-half the road from Portland to Morrell's corner | 28,220 93 | | 28,220 93 |
| Receipts for rents . . | 197 75 | | 197 75 |
| " " bonds to contractor . | 39,842 72 | 23,027 95 | 62,870 67 |
| " " depot grounds | 6,360 00 | | 6,360 00 |
| " " bills payable | 87,445 09 | 8,271 66 | 95,416 75 |
| " " sales of buildings at Great Falls | | 250 00 | 250 00 |
| | $330,572 91 | 71,404 62 | 401,977 53 |

*Expenditures.*

| | | | |
|---|---|---|---|
| For making road-bed, and laying the superstructure | $159,649 11 | 51,162 76 | 210,811 87 |
| For culverts and bridges | 30,794 00 | 10,591 00 | 41,385 00 |
| " fencing . . | 7,449 50 | 722 00 | 8,171 50 |
| " iron . . . | 45,854 39 | | 45,854 39 |
| " engineering . . | 8,977 11 | 5,087 12 | 14,064 23 |
| " land damage and costs settling do. . | 22,211 78 | 1,512 00 | 23,723 78 |
| " buildings and fixtures, including depot at Portland . | 15,690 57 | | 15,690 57 |
| " locomotives . . | 9,235 00 | | 9,235 00 |
| " passenger cars . | 2,500 00 | | 2,500 00 |
| " freight cars . . | 6,325 00 | | 6,325 00 |
| " interest to stockholders on assessments paid | 6,028 47 | 3 00 | 6,031 47 |
| " interest on company's notes . . | 7,017 18 | 90 50 | 7,107 68 |
| " salaries, agencies, and office expenses . | 5,821 32 | 1,306 17 | 7,127 49 |
| " general and incidental expenses . . | 3,019 48 | 930 07 | 3,949 55 |
| | $330,572 91 | 71,404 62 | 401,977 53 |

The above amounts are all charged on account of construction, and by contract; the whole sum is charged to the contractor, excepting amounts paid for salaries, agencies, interest, and office expenses.

| | |
|---|---|
| The amount of subscriptions uncollected, 1st division, | $54,821 00 |
| " " " 4th " | 40,722 00 |
| | $95,543 00 |

*Running Receipts and Expenses.*

| | Passengers. | Freights. | Total. | Expenditures. | Net income. |
|---|---|---|---|---|---|
| Feb., 20 days, | $390 52 | $ 22 51 | $413 03 | $399 88 | $ 13 15 |
| March . | 742 07 | 185 02 | 927 09 | 895 38 | 31 71 |
| April . | 761 15 | 115 57 | 876 72 | 631 85 | 244 87 |
| May . | 755 78 | 65 84 | 821 62 | 496 75 | 324 87 |
| June . | 813 31 | 64 68 | 877 99 | 758 00 | 119 99 |
| | $3,462 83 | 453 62 | 3,916 45 | 3,181 86 | 734 59 |

PORTLAND, *July* 1, 1851.

York and Cumberland Railroad Company.

The undersigned Committee of the Directors of the York and Cumberland Railroad Company have examined the foregoing account of Daniel C. Emery, Treasurer, to June 30th, 1851, inclusive, as the same is stated therein, and in books of account herewith submitted. They find the charges correctly made and properly vouched, and that there is due the treasurer, to the end of June 30th, 1851, a balance of $3,824 67, according to the statement of the books of the treasurer.

JOHN A. POOR,
AUSTIN J. FITCH,
RUFUS McINTIRE, } *Committee.*

*July* 29, 1851.

(*Treasurer's Report*, 1852.)

## TREASURER'S REPORT.

To the Stockholders of the York and Cumberland Railroad Company:—

The Treasurer of the York and Cumberland Railroad Company, in compliance with the by-laws, respectfully submits the following report, to July 1st, 1852:—

| Receipts. | 1st Division. | 4th Division. | Total. |
|---|---|---|---|
| Rec'd from ass'm'ts on shares capital stock | 176,997 73 | 41,967 01 | 218,964 74 |
| Rec'd from K. & P. R. R. Co. for one half of road between Portland and Morrell's | 28,220 93 | | 28,220 93 |
| Rec'd from rent of buildings owned by the Co. | 235 87 | | 235 87 |
| Rec'd from buildings sold | 717 25 | 250 00 | 967 25 |
| " running receipts | 1,505 22 | | 1,505 22 |
| " interest on bonds sold | 330 81 | | 330 81 |
| " bonds sold | 131,760 00 | 13,000 00 | 144,760 00 |
| " bonds pledged | 22,200 00 | | 22,200 00 |
| " bills payable | 19,002 05 | 13,237 94 | 32,239 99 |
| | $380,969 86 | $68,454 95 | $449,424 81 |
| **Expenditures.** | | | |
| For making road-bed and superstructure | 145,851 02 | 44,112 05 | 189,963 07 |
| " culverts and bridges | 36,700 00 | 8,717 60 | 45,417 60 |
| " fencing | 8,170 35 | 800 00 | 8,970 35 |
| " ironing | 45,854 39 | | 45,854 39 |
| " engineering | 11,074 63 | 6,317 57 | 17,392 20 |
| " land damages and cost of settling do. | 26,606 73 | 1,512 00 | 28,118 73 |
| " buildings and fixtures | 17,607 22 | | 17,607 22 |
| " locomotives | 9,235 00 | | 9,235 00 |
| " passenger cars | 2,567 97 | | 2,567 97 |
| " freight, baggage, and gravel cars | 9,975 00 | | 9,975 00 |
| " interest paid to stockholders | 6,012 81 | 193 00 | 6,205 81 |
| " interest paid on company notes | 12,417 70 | 2,453 28 | 14,870 98 |

TREASURER'S REPORT.—*Continued.*

| Receipts. | 1st Division. | 4th Division. | Total. |
|---|---|---|---|
| For bond coupons . . . . | 2,730 33 | 100 00 | 2,830 33 |
| " discount on bonds sold less than par . . . | 33,595 75 | | 33,595 75 |
| " salaries, agencies, and office expenses . . . | 7,442 11 | 2,875 15 | 10,317 26 |
| " general and incidental expenses . . . . . | 5,128 85 | 1,374 30 | 6,503 15 |
| | $380,969 86 | $68,454 95 | $449,424 81 |

| | | |
|---|---|---|
| The whole number of shares which have been paid for in full, and for which certificates have been issued, to this date, 3,856, at $50 . . . . . | | $192,800 00 |
| Number of shares subscribed for and paid in part, 2,261. Amount paid . . . . . | | 26,164 74 |
| Whole amount paid for stock . . . | | 218,964 74 |
| Balance due the company . . . . | | 86,885 26 |
| | | $305,850 00 |
| Number of shares fully paid . . | 3,856 | |
| " " paid in part . | 2,261 | |
| Whole number of shares . . . | 6,117 at $50 | 305,850 00 |
| Amount of uncollected subscriptions, 1st div. | | 48,275 26 |
| " " 4th " | | 38,610 00 |
| | | $86,885 26 |

The Treasurer's Report of last year was based upon the Engineer's estimates of work done. A subsequent survey made by John F. Anderson, Esq., Chief Engineer of the company, show the work done less than the former estimate. In accordance with a vote of the directors, the difference in these estimates, so far as it had not been paid to the contractor, was deducted from the construction account.

DANIEL C. EMERY.
*Treasurer.*

PORTLAND, *July* 30, 1852.

*Running Receipts and Expenditures, commencing February 8th, 1851, up to July 1st, 1852.*

| Date. | No. of passengers. | Rec'd from passengers. | Rec'd from freight. | Total receipts. | Expense of run'g trains. |
|---|---|---|---|---|---|
| 1851. | | | | | |
| February | 1,462 | 390 52 | 22 51 | 413 03 | 139 88 |
| March | 3,979 | 742 07 | 185 02 | 927 09 | 1,368 27 |
| April | 3,708 | 761 15 | 115 57 | 876 72 | 418 96 |
| May | 4,449 | 755 78 | 65 84 | 821 62 | 796 75 |
| June | 4,126 | 13 31 | 64 68 | 877 99 | 882 36 |
| July | 5,970 | 1,211 25 | 111 67 | 1,322 92 | 997 53 |
| August | 5,996 | 1,245 64 | 56 45 | 1,302 09 | 1,027 93 |
| September | 5,036 | 1,029 85 | 96 80 | 1,126 65 | 820 19 |
| October | 3,832 | 785 48 | 107 80 | 893 28 | 846 08 |
| November | 3,537 | 684 73 | 113 81 | 798 54 | 941 02 |
| December | 2,779 | 587 11 | 97 05 | 684 16 | 1,053 72 |
| 1852. | | | | | |
| January | 2,270 | 454 42 | 56 17 | 510 59 | 889 71 |
| February | 2,269 | 456 23 | 118 66 | 574 89 | 915 77 |
| March | 3,823 | 716 43 | 375 72 | 1,092 15 | 756 75 |
| April | 4,396 | 834 19 | 209 17 | 1,043 36 | 784 86 |
| May | 5,085 | 884 54 | 207 14 | 1,091 68 | 848 31 |
| June | 5,329 | 1,005 31 | 215 91 | 1,221 22 | 644 67 |
| | $68,056 | $13,358 01 | $2,279 97 | $15,637 98 | $14,132 76 |

Nett receipts . . . . $1,505 22

DANIEL C. EMERY,
*Superintendent.*

PORTLAND, *July* 30, 1852.

(*Demand for Bonds.*)

H.

*Copy.*

BOSTON, *April* 14, 1852.

To LEVY MORRELL, ESQ., Westbrook, Maine:—

*Sir:* I hereby demand of you eleven thousand dollars of the bonds of the York and Cumberland Railroad Company, now in your hands and belonging to me, and request you forthwith to deliver the same to Mr. N. J. Herrick, who I hereby authorize and empower as my attorney to receive and receipt for the same. In failure of the delivery of the same, I shall take legal measures to secure my rights of property in the said bonds.

J. G. MYERS.

(*Authority to Sell.*)

I.

The undersigned, a majority of the indorsers upon certain notes signed by D. C. Emery, Treasurer of the York and Cumberland Railroad Company, for security for the payment of which, bonds of the York and Cumberland Railroad Company, amounting to sixty-one thousand five hundred dollars, have been delivered by J. G. Myers, under agreement with the company, to Levi Morrell, on special deposit for the exclusive security and indemnity of the several and individual indorsers of said notes, on any renewal thereof, to be used and sold in payment and discharge of the debts so indorsed as necessity shall require, and on such terms as the majority of said indorsing directors shall deem expedient, do hereby authorize and empower the said Morrell, at his discretion, to sell and dispose of said bonds for such sum or sums, and to such person or persons as he may deem expedient, he the said Morrell not to sell the same at less than eighty-five per cent of the face thereof, and to account to the undersigned therefor; he, the said Morrell, to give to the undersigned, or either of us, full and particular information of his proceedings or doings in the premises, and of the different sales or any sale or sales he may make in the premises.

RUFUS McINTIRE,
JOHN A. POOR,
N. L. WOODBURY,
DANIEL C. EMERY,
LEVI MORRELL,
GEORGE WARREN,
JOSIAH PIERCE.

ALFRED, *Aug.* 26, 1851.

(*Second Authority to Sell.*)

J.

The undersigned indorsers of the notes of York and Cumberland Railroad Company, holding bonds as security therefor according to the terms of the contract with John G. Myers, under date of Feb. 6, 1851, which bonds are left on special deposit for security of the directors with Levi Morrell, hereby agree that said Morrell may sell said bonds at *seventy dollars* to the hundred in payment and discharge of said indorsers at his discretion.

RUFUS McINTIRE,
JOHN A. POOR,
N. L. WOODBURY,
JOSIAH PIERCE,
GEORGE WARREN.

PORTLAND, *Jan.* 7, 1852.

I, Levi Morrell, make affidavit and say, that I have no knowledge where the original paper is, which was signed by the indorsing

directors of the Y. and C. Railroad, being a notice from them to John G. Myers of a contemplated sale of the bonds, put into my hands to secure said indorsers, and dated Dec. 30, 1851, the said notice is not in my possession, nor do I know where it is. I have made diligent search to find the same, but cannot find it.

LEVI MORRELL.

Subscribed and sworn to before me,

WM. P. PREBLE, JR.,

PORTLAND, *Oct.* 2, 1855. *Clerk pro tem.*

(*Notice to Myers.*)

K.

(Copy.)

To JOHN G. MYERS—

*Sir*: With reference to the bonds of the York and Cumberland Railroad Company, amounting to the sum of sixty-one thousand five hundred dollars, held by Levi Morrell "on special deposit for the exclusive security and indemnity of the several and individual directors of said Board against harm and loss for and on account of their several and respective liabilities as indorsers for the debts of said company," in pursuance of the contract and agreement entered with between yourself and Francis O. J. Smith, president of said company, on the sixth day of February, 1851—you will please to take notice that large amounts of the indebtedness of said company, secured by indorsement of individual directors as above specified, have become due, and have been taken up and cancelled by the respective indorsers, and that other sums and amounts, secured in like manner, are now maturing, and will be taken up and paid by the indorsers at maturity thereof.

The directors, indorsers as aforesaid, will proceed, after the expiration of twenty days from this date, to make such use and sale of said bonds in payment and discharge of the debts so indorsed as is provided by the terms of said agreement, and the object of this is to give you notice thereof, that you may, if you see fit, take measures within that time to indemnify said indorsers, and reimburse to them the amounts which they have assumed and paid, and to secure and make available to yourself such interest, if any, as you may have in the bonds deposited with Mr. Morrell as aforesaid.

LEVI MORRELL,
GEORGE WARREN,
JOHN A. POOR,
N. L. WOODBURY,
JOSIAH PIERCE,
RUFUS McINTIRE.

*Dec.* 30*th*, 1851.

On the second day of January, A. D. 1852, I gave John G. Myers, in hand, a true copy of the within.

JOHN M. ADAMS.

(*Notes outstanding, Feb.* 6, 1851.)

A.

*Memorandum of Notes of the York and Cumberland Railroad Company, endorsed by the Directors, outstanding Feb.* 6, 1851.

| No. | Date. | Amount. | When payable. | By whom held. | Names of Indorsers. |
|---|---|---|---|---|---|
| 1 | Jany. 1, 1851. | $500 00 | Jan. 1, 1852. | E. L. Cummings. | David Hayes, George Warren, F. O. J. Smith, John A. Poor, Levi Morrell, Benj. J. Herrick, Rufus McIntire. |
| 2 | Jan. 11, 1851. | 800 00 | Jan. 11, 1852 | B. C. Cummings | D. Hayes, Geo. Warren, F. O. J. Smith, J. A. Poor, L. Morrell, Benj. J. Herrick, Rufus McIntire. |
| 3 | Jan. 11, 1851. | 500 00 | Jan. 11, 1852 | B. C. Cummings | D. Hayes, Geo. Warren, F. O. J. Smith, J. A. Poor, Levi Morrell, B. J. Herrick, R. McIntire. |
| 4 | Jan. 11, 1851 | 500 00 | Jan. 11, 1852 | B. C. Cummings | D. Hayes, Geo. Warren, F. O. J. Smith, J. A. Poor, Levi Morrell, B. J. Herrick, R. McIntire. |
| 5 | Jan. 16, 1851 | 500 00 | Jan. 16, 1852 | B. C. Cummings | D. Hayes, F. O. J. Smith, B. J. Herrick, Levi Morrell, Rufus McIntire, G. Warren, N. L. Woodbury, Josiah Pierce |
| 6 | Jan. 23, 1851 | 500 00 | Jan. 23, 1852 | B. C. Cummings | D. Hayes, F. O. J. Smith, B. J. Herrick, Levi Morrell, Rufus McIntire, Geo. Warren, N. L. Woodbury, J. Pierce. |
| 7 | June 12, 1850 | 11,484 47 | Feb. 12, 1851 | Wainright & Tappan | D. Hayes, F. O. J. Smith, R. McIntire, G. Warren, L. Morrell, J. A. Poor, J. Pierce, D. C. Emery, Benj. J. Herrick. |
| 8 | Oct. 19, 1850 | 500 00 | Feb. 19, 1851 | Unknown. | D. Hayes, F. O. J. Smith, J. A. Poor, J. Pierce, L. Morrell, B. J. Herrick, R. McIntire, N. L. Woodbury. |

| No. | Date. | Amount. | When payable. | By whom held. | Names of Indorsers. |
|---|---|---|---|---|---|
| 9 | Dec. 26, 1850 | $1,000 00 | Apr. 26, 1851 | CanalBank | D. C. Emery, D. Hayes, Levi Morrell, J. Pierce, N. L. Woodbury, John A. Poor. |
| 10 | Feb. 4, 1851 | 1,000 00 | Feb. 4, 1852 | B. C. Cummings | D. Hayes, F. O. J. Smith, J. A. Poor, G. Warren, Levi Morrell, Rufus McIntire, J. Pierce, N. L. Woodbury. |
| 11 | Feb. 4, 1851 | 500 00 | Feb. 4, 1852 | B. C. Cummings | D. Hayes, F. O. J. Smith, J. A. Poor, Geo. Warren, L. Morrell, R. McIntire, J. Pierce, N. L. Woodbury. |
| 12 | Feb. 4, 1851 | 500 00 | Feb. 4, 1852 | B. C. Cummings | D. Hayes, F. O. J. Smith, J. A. Poor, Geo. Warren, Levi Morrell, R. McIntire, J. Pierce, N. L. Woodbury. |
| 13 | Sept.15, 1850 | 1,000 00 | Mar. 15, 1851 | P. S. & P. R. Comp. | D. Hayes, F. O. J. Smith, John A. Poor, L. Morrell, B. J. Herrick, R. McIntire, J. Pierce, N. L. Woodbury. |
| 14 | Sept.15, 1850 | 1,500 00 | Mar. 15, 1851 | P. S. & P. R. R. Co. | D. Hayes, F. O. J. Smith, J. A. Poor, J. Pierce, L. Morrell, B. J. Herrick, R. McIntire. |
| 15 | Sept.15, 1850 | 700 00 | Mar. 15, 1851 | P. S. & R. R. Co. | D. Hayes, F. O. J. Smith, J. A. Poor, Josiah Pierce, L. Morrell, B. J. Herrick, R. McIntire, N. L. Woodbury. |
| 16 | Nov. 1, 1850 | 1,000 00 | Mar. 1, 1851 | Bank of Cumbe'ld | D. C. Emery, F. O. J. Smith, L. Morrell, B. J. Herrick, R. McIntire, G. Warren, N. L. Woodbury. |
| 17 | Oct. 7, 1850 | 1,000 00 | April 7, 1851 | Unknown | D. Hayes, F. O. J. Smith, John A. Poor, J. Pierce, L. Morrell, B. J. Herrick, R. McIntire, N. L. Woodbury. |

| No. | Date. | Amount. | When payable. | By whom held. | Names of Indorsers. |
|---|---|---|---|---|---|
| 18 | Aug. 15, 1850 | 1,000 00 | April15, 1851 | Luther Jewett | D. Hayes, F. O. J. Smith, B. J. Herrick, L. Morrell, R. McIntire, Geo. Warren, N. L. Woodbury, J. Pierce. |
| 19 | Dec. 30, 1850 | 1,000 00 | April30, 1851 | Canal Bank | D. C. Emery, D. Hayes, Levi Morrell, Josiah Pierce, N. L. Woodbury, J. A. Poor. |
| 20 | Oct. 7, 1850 | 1,000 00 | May 7, 1851 | Tinkham & Jewett | D. Hayes, F. O. J. Smith, J. A. Poor, Josiah Pierce, L. Morrell, B. J. Herrick, R. McIntire, N. L. Woodbury, Tinkham & Jewett. |
| 21 | Nov. 14, 1850 | 1,500 00 | May 14, 1851 | Unknown | D. Hayes, F. O. J. Smith, J. A. Poor, J. Pierce, L. Morrell, B. J. Herrick, R. McIntire, N. L. Woodbury. |
| 22 | Nov. 24, 1850 | 800 00 | May 24, 1851 | Unknown | D. Hayes, F. O. J. Smith, J. A. Poor, J. Pierce, L. Morrell, B. J. Herrick, R. McIntire, N. L. Woodbury. |
| 23 | Jan. 20, 1851 | 850 00 | May 20, 1851 | Merchants' Bank | D. Hayes, F. O. J. Smith, R. McIntire, J. A. Poor, Levi Morrell, J. Pierce, N. L. Woodbury, B. J. Herrick, R. Mitchell. |
| 24 | June 12, 1850 | 10,000 00 | June 12, 1851 | Wainright & Tappan | D. Hayes, F. O. J. Smith, R. McIntire, G. Warren, L. Morrell, J. A. Poor, Josiah Pierce, D. C. Emery, B. J. Herrick. |
| 25 | Aug. 15, 1850 | 1,000 00 | June 15, 1851 | Luther Jewett | D. Hayes, F. O. J. Smith, B. J. Herrick, L. Morrell, R. McIntire, Geo. Warren, N. L. Woodbury, J. Pierce. |

| No. | Date. | Amount. | When payable. | By whom held. | Names of Indorsers. |
|---|---|---|---|---|---|
| 26 | Aug. 15, 1850 | 1,000 00 | Aug. 15, 1851 | Luther Jewett | D. Hayes, F. O. J. Smith, B. J. Herrick, Levi Morrell, R. McIntire, Geo. Warren, N. L. Woodbury, J. Pierce. |
| 27 | Oct. 10, 1850 | 1,000 00 | Oct. 10, 1851 | Bank of Cumberl'd | D. Hayes, F. O. J. Smith, J. A. Poor, J. Pierce, L. Morrell, B. J. Herrick, R. McIntire, N. L. Woodbury, A. P. Waterhouse. |
| 28 | Oct. 11, 1850 | 1,000 00 | Oct. 11, 1851 | Jo. Ilsley | D. Hayes, F. O. J. Smith, J. A. Poor, J. Pierce, L. Morrell, B. J. Herrick, R. McIntire, N. L. Woodbury. |
| 29 | Oct. 16, 1850 | 1,000 00 | Oct. 16, 1851 | Unknown | D. Hayes, F. O. J. Smith, J. A. Poor, J. Pierce, L. Morrell, B. J. Herrick, R. McIntire, N. L. Woodbury. |
| 30 | Oct. 30, 1850 | 500 00 | Oct. 30, 1851 | Unknown | D. Hayes, F. O. J. Smith, J. A. Poor, J. Pierce, L. Morrell, B. J. Herrick, Rufus McIntire, N. L. Woodbury. |
| 31 | Nov. 1, 1850 | 500 00 | Nov. 1, 1851 | Unknown | D. Hayes, F. O. J. Smith, J. A. Poor, J. Pierce, L. Morrell, B. J. Herrick, R. McIntire, N. L. Woodbury. |
| 32 | Dec. 28, 1850 | 500 00 | Dec. 28, 1851 | S. Cummings | D. Hayes, Geo. Warren, F. O. J. Smith, J. A. Poor, Levi Morrell, B. J. Herrick, Rufus McIntire. |
| 33 | Dec. 24, 1850 | 1,000 00 | Dec. 24, 1851 | S. Cummings | D. Hayes, Geo. Warren, F. O. J. Smith, J. A. Poor, L. Morrell, Benjamin J. Herrick, Rufus McIntire. |
| 34 | Dec. 24, 1850 | 1,000 00 | Dec. 24, 1851 | Cummings | D. Hayes, G. Warren, F. O. J. Smith, J. A. Poor, L. Morrell, B. J. Herrick, R. McIntire. |

| No. | Date. | Amount. | When payable. | By whom held. | Names of Indorsers. |
|---|---|---|---|---|---|
| 35 | Dec. 24, 1850 | 500 00 | Dec. 24, 1851 | Cummings | D. Hayes, G. Warren, F. O. J. Smith, John A. Poor, L. Morrell, B. J. Herrick, R. McIntire. |
| 36 | Dec. 24, 1850 | 500 00 | Dec. 24, 1851 | Cummings | D. Hayes, G. Warren, F. O. J. Smith, John A. Poor, Levi Morrell, B. J. Herrick, Rufus McIntire. |
| 37 | Dec. 24, 1850 | 500 00 | Dec. 24, 1851 | Cummings | D. Hayes, G. Warren, F. O. J. Smith, John A. Poor, Levi Morrell, B. J. Herrick, R. McIntire. |
| 38 | Dec. 24, 1850 | 500 00 | Dec. 24, 1851 | Cummings | D. Hayes, G. Warren, F. O. J. Smith, John A. Poor, Levi Morrell, B. J. Herrick, R. McIntire. |
| | | $50,134 47 | | | |

The within named notes were disposed of as follows:—

| | | |
|---|---|---|
| The Company paid note numbered 9 | . . . | $1,000 00 |
| " " " " " 13 | . . . | 1,000 00 |
| " " " " " 24 | . . . | 1,000 00 |
| " " " " " 7 in part | . . | 1,484 47 |
| " " " " " 23 in part | . . | 50 00 |
| | | $4,534 47 |
| Mr. Morrell paid old notes, | . . . . . | $10,800 00 |
| Notes renewed and paid by Morrell, | . . . . | 29,300 00 |
| Original notes now outstanding, | . . . . | 3,000 00 |
| Renewed notes now outstanding, | . . . . | 2,500 00 |
| | | $50,134 47 |

(*Notes taken up from proceeds of bonds.*)

B.

*Memorandum of Notes paid and taken up by Levi Morrell with money received from sale of Bonds.*

*Original Notes.*

| No. | Amount. | Amount paid including interest. | Time when paid by Levi Morrell. | |
|---|---|---|---|---|
| 1 | $500 00 | $531 42 | June 30, 1852 | For names of indorsers on these notes, see notes of same numbers on sheet "A." |
| 2 | 800 00 | 947 87 | June 28, 1852 | |
| 5 | 500 00 | 560 72 | June 30, 1852 | |
| 6 | 500 00 | 556 50 | June 24, 1852 | |
| 10 | 1,000 00 | 1,100 60 | June 28, 1852 | |
| 11 | 500 00 | 550 90 | June 28, 1852 | |
| 12 | 500 00 | 541 76 | June 30, 1852 | |
| 27 | 1,000 00 | 1,096 50 | April 30, 1852 | |
| 28 | 1,000 00 | 1,090 00 | April 30, 1852 | |
| 29 | 1,000 00 | 1,088 50 | April 30, 1852 | |
| 30 | 500 00 | 543 15 | April 30, 1852 | |
| 31 | 500 00 | 543 44 | April 30, 1852 | |
| 32 | 500 00 | 561 50 | June 26, 1852 | |
| 33 | 1,000 00 | 1,096 96 | June 30, 1852 | |
| 36 | 500 00 | 562 80 | June 21, 1852 | |
| 37 | 500 00 | 562 80 | June 24, 1852 | |
| | $10,800 00 | $11,935 42 | | |

| No. | Date. | Time when payable. | Time when paid by Morrell. | Amount. | Amount paid with interest. | Names of Indorsers. |
|---|---|---|---|---|---|---|
| 50 | July 23, 1851 | Sep. 23, 1851 | Aug. 27, 1852 | $1,000 00 | $1,121 66 | D. Hayes, F. O. J. Smith, R. McIntire, G. Warren, J. Pierce, J. A. Poor, N. L. Woodbury, L. Morrell. |
| 51 | Ap'l 1, 1852 | Oct. 1, 1852 | Aug. 31, 1852 | 1,000 00 | 1,025 17 | R. McIntire, L. Morrell, Geo. Warren, John A. Poor, J. Pierce, N. L. Woodbury. |
| 52 | Mar. 24, 1851 | Mar. 24, 1852 | Aug. 31, 1852 | 500 00 | 562 08 | Hayes, Smith, Poor, Warren, Morrell, McIntire, Pierce, Woodbury, Herrick. |
| 53 | Mar. 10, 1851 | Mar. 10, 1852 | June 30, 1852 | 500 00 | 535 60 | Hayes, Smith, Poor, Warren, Morrell, McIntire, Pierce, Woodbury, Herrick. |
| 54 | Mar. 4, 1851 | Mar. 4, 1852 | June 30, 1852 | 500 00 | 536 48 | Hayes, Smith, Poor, Warren, Morrell, McIntire, Pierce, Woodbury, Herrick. |
| 55 | Mar. 28, 1851 | Mar. 28, 1852 | June 30, 1852 | 500 00 | 532 26 | Hayes, McIntire, Morrell, Pierce, Warren, Herrick, Smith, Woodbury. |
| 56 | Feb. 12, 1851 | Feb. 12, 1852 | June 30, 1852 | 1,000 00 | 1,080 50 | Hayes, Smith, Poor, Warren, Morrell, McIntire, Pierce, N. Woodbury, Herrick. |
| 57 | Mar. 20, 1851 | Mar. 20, 1852 | June 30, 1852 | 1,000 00 | 1,066 40 | Hayes, Smith, Poor, Warren, Morrell, McIntire, Pierce, Woodbury, Herrick. |
| 58 | July 21, 1851 | Nov. 21, 1851 | June 30, 1852 | 1,000 00 | 1,058 83 | Hayes, Smith, Herrick, McIntire, Warren, Pierce, Poor, Woodbury, Morrell. |
| 59 | July 23, 1851 | Sep. 23, 1851 | June 28, 1852 | 1,000 00 | 1,096 94 | Hayes, Smith, Herrick, McIntire, Warren, Pierce, Poor, Woodbury, Morrell. |

| No. | Date. | Time when payable. | Time when paid by Morrell. | Amount. | Amount paid with interest. | Names of Indorsers. |
|---|---|---|---|---|---|---|
| 60 | Ap'l 16, 1851 | Oct. 16, 1851 | June 28, 1852 | 500 00 | 535 33 | Hayes, McIntire, Morrell, Pierce, Warren, Herrick, Smith, Woodbury. |
| 61 | Aug. 16, 1851 | Oct. 16, 1851 | June 30, 1852 | 1,000 00 | 1,043 34 | Hayes, Smith, Herrick, McIntire, Warren, Pierce, Poor, Morrell. |
| 62 | Aug. 16, 1851 | Oct. 16, 1851 | June 30, 1852 | 1,000 00 | 1,054 67 | Hayes, Smith, Herrick, McIntire, Warren, Pierce, Poor, Woodbury, Morrell. |
| 63 | Feb. 17, 1851 | Feb. 17, 1852 | June 28, 1852 | 1,000 00 | 1,060 50 | Hayes, Smith, Poor, Warren, Morrell, McIntire, Pierce, Woodbury, Herrick. |
| 64 | June 13, 1851 | Dec. 13, 1851 | June 21, 1852 | 500 00 | 515 00 | Hayes, McIntire, Herrick, Pierce, Warren, Smith, Morrell, John A. Poor. |
| 65 | June 13, 1851 | Dec. 13, 1851 | June 21, 1852 | 500 00 | 515 00 | Hayes, McIntire, Herrick, Pierce, Warren, Smith, Morrell, Poor. |
| 66 | Feb. 10, 1851 | Feb. 10, 1852 | June 26, 1852 | 750 00 | 830 75 | Hayes, Smith, Poor, Warren, Morrell, McIntire, Pierce, Woodbury, Herrick. |
| 67 | Ap'l 12, 1851 | Aug. 12, 1851 | June 26, 1852 | 500 00 | 535 87 | Hayes, McIntire, Morrell, Pierce, Warren, Herrick, Smith, Woodbury. |
| 68 | Mar. 10, 1851 | Mar. 10, 1852 | June 28, 1852 | 500 00 | 549 66 | Hayes, Smith, Poor, Warren, Morrell, McIntire, Pierce, Woodbury, Herrick. |
| 69 | Sep. 26, 1851 | Mar. 26, 1852 | June 21, 1852 | 1,000 00 | 1,088 34 | McIntire, Morrell, Pierce, Warren, Woodbury, Poor. |
| 70 | Nov. 20, 1851 | Feb. 20, 1852 | June 21, 1852 | 850 00 | 873 18 | McIntire, Warren, Morrell, Poor, Pierce, Woodbury. |

| No. | Date. | Time when payable. | Time when paid by Morrell. | Amount. | Amount paid with interest. | Names of Indorsers. |
|---|---|---|---|---|---|---|
| 71 | Sep. 10, 1851 | Feb. 10, 1852 | June 21, 1852 | 800 00 | 830 96 | Hayes, Smith, Morrell, Woodbury, Poor, McIntire, Herrick, Pierce, Warren. |
| 72 | June 18, 1851 | Aug. 18, 1851 | June 21, 1852 | 1,000 00 | 1,101 50 | Hayes, McIntire, Herrick, Pierce, Warren, Smith, Morrell, Woodbury, Poor. |
| 73 | July 30, 1851 | Nov. 30, 1851 | Ap'l 30, 1852 | 500 00 | 523 50 | Hayes, Herrick, Pierce, Warren, Smith, Morrell, Poor, McIntire. |
| 74 | Aug. 8, 1851 | Oct. 8, 1851 | Ap'l 30, 1852 | 1,000 00 | 1,023 66 | Hayes, Smith, Herrick, McIntire, Warren, Pierce, Poor, Morrell. |
| 75 | June 13, 1851 | Dec. 13, 1851 | Ap'l 30, 1852 | 1,000 00 | 1,045 33 | Hayes, Herrick, Warren, Smith, Morrell, Poor, McIntire, Pierce. |
| 76 | June 13, 1851 | Dec. 13, 1851 | Ap'l 30, 1852 | 500 00 | 522 67 | Hayes, McIntire, Herrick, Pierce, Warren, Smith, Morrell, Poor. |
| 77 | June 13, 1851 | Dec. 13, 1851 | Ap'l 30, 1852 | 500 00 | 527 66 | Hayes, McIntire, Herrick, Pierce, Warren, Smith, Warren, John A. Poor. |
| 78 | Ap'l 14, 1851 | Ap'l 14, 1852 | Ap'l 30, 1852 | 500 00 | 531 50 | Hayes, McIntire, Morrell, Pierce, Warren, Herrick, Smith, N. L. Woodbury. |
| 79 | May 27, 1851 | Nov. 27, 1851 | Ap'l 30, 1852 | 500 00 | 535 50 | Hayes, Smith, Morrell, Woodbury, Poor, McIntire, Herrick, Pierce, Warren. |
| 80 | Ap'l 21, 1851 | Ap'l 21, 1852 | Ap'l 30, 1852 | 500 00 | 560 75 | Hayes, McIntire, Morrell, Pierce, Warren, Herrick, Smith, Woodbury. |

| No. | Date. | Time when payable. | Time when paid by Morrell. | Amount. | Amount paid with interest. | Names of Indorsers. |
|---|---|---|---|---|---|---|
| 81 | June 14, 1851 | Dec. 14, 1851 | June 17, 1852 | 1,000 00 | 1,060 00 | Hayes, Herrick, Pierce, Warren, Smith, Morrell, Poor. |
| 82 | June 30, 1851 | Feb. 30, 1852 | Mar. 8, 1852 | 600 00 | 641 00 | Hayes, Smith, Herrick, McIntire, Warren, Pierce, Poor, Morrell. |
| 83 | Sep. 22, 1851 | Jan. 22, 1852 | May 1 & 27 | 1,000 00 | 1,000 00 | Hayes, McIntire, Herrick, Smith, Poor, Warren, Pierce, Morrell. |
| 84 | Mar. 4, 1851 | Mar. 4, 1852 | June 30, 1852 | 500 00 | 541 00 | Hayes, Smith, Poor, Warren, Morrell, McIntire, Pierce, Woodbury, Herrick. |
| 85 | Mar. 28, 1851 | Mar. 28, 1851 | June 30, 1852 | 300 00 | 329 22 | Hayes, Smith, Herrick, McIntire, Warren, Pierce, Poor, Woodbury, Morrell. |
| 86 | May 10, 1852 | May 10, 1853 | Aug. 31, 1852 | 1,000 00 | 1,018 34 | McIntire, Warren, Morrell, Poor, Pierce, Woodbury. |
| 87 | May 10, 1852 | May 10, 1853 | Aug. 31, 1852 | 1,000 00 | 1,018 33 | McIntire, Warren, Morrell, Poor, Pierce, Woodbury. |
| 88 | Aug. 9, 1851 | Oct. 9, 1851 | Ap'l 30, 1852 | 1,000 00 | 1,099 00 | Hayes, Smith, Morrell, Woodbury, Poor, McIntire, Herrick, Pierce, Warren. |
| | | | Am't renewed notes, | $29,300 00 | $31,127 48 | |
| | | | Am't original notes, | 10,800 00 | 11,935 42 | |
| | | | Total notes paid by Morrell, | $40,100 00 | $43,062 90 | |

(*Unpaid Notes.*)

C.

*Memorandum of Indorsed Notes outstanding and still unpaid.*

ORIGINAL NOTES.

| No. | Date. | When payable. | By whom held. | Amount. | Names of Indorsers. |
|---|---|---|---|---|---|
| 3 | Jan. 11, 1851 | Jan. 11, 1852 | B. C. Cummings | $500 00 | Hayes, Warren, Smith, Poor, Morrell, B. J. Herrick, Rufus McIntire. |
| 4 | Jan. 11, 1851 | Jan. 11, 1852 | B. C. Cummings | 500 00 | Hayes, Warren, F. O. J. Smith, J. A. Poor, Morrell, B. J. Herrick, R. McIntire. |
| 34 | Dec. 24, 1850 | Dec. 24, 1851 | B. C. Cummings | 1,000 00 | Hayes, Warren, Smith, Poor, Morrell, Herrick, McIntire. |
| 35 | Dec. 24, 1850 | Dec. 24, 1851 | B. C. Cummings | 500 00 | Hayes, Warren, Smith, Poor, Morrell, Herrick, McIntire. |
| 38 | Dec. 24, 1850 | Dec. 24, 1851 | B. C. Cummings | 500 00 | Hayes, Warren, Smith, Poor, Morrell, Herrick, McIntire. |
| Amount of original notes unpaid, | | | | $3,000 00 | |

RENEWED NOTES.

| | | | | | |
|---|---|---|---|---|---|
| 39 | Mar. 28, 1851 | Mar. 28, 1852 | B. C. Cummings | 500 00 | Hayes, Smith, Poor, Warren, Morrell, McIntire, Pierce, Woodbury, Herrick. |
| 40 | June 7, 1851 | Dec. 7, 1851 | E. Williams | 500 00 | Hayes, Smith, Morrell, Woodbury, McIntire, Herrick, Pierce, Warren, Poor. |
| 41 | June 7, 1851 | Dec. 7, 1851 | E. Williams | 1,000 00 | Hayes, Smith, Morrell, Woodbury, Poor, McIntire, Herrick, Pierce, Warren. |
| 42 | June 14, 1851 | Dec. 14, 1851 | E. Williams | 500 00 | Hayes, Herrick, Pierce, Warren, Smith, Morrell, Poor. |
| Renewed notes outstanding, | | | | $2,500 00 | |
| Total indorsed notes unpaid, | | | | $5,500 00 | |

(*Bonds Sold.*)

D.

*Memorandum of Bonds Sold by Levi Morrell.*

| When sold. | To whom sold. | No. of the bonds sold. | Amount of the bonds. | Amount for which bonds sold. |
|---|---|---|---|---|
| 1852 | | | | |
| Mar. 8 | Stephen Hinkley | 17 | $1,000 00 | $700 00 |
| April 30 | Levi Morrell | 16, 18, 19, 20, 21, 22, 23, and 66 | 7,500 00 | 5,250 00 |
| " 30 | N. L. Woodbury | 24, 25, 26 | 3,000 00 | 2,100 00 |
| " 30 | Josiah Pierce | 27, 28, 29, 30, 67 | 4,500 00 | 3,150 00 |
| " 30 | Jos. Walker, Jr. | 31 | 1,000 00 | 700 00 |
| June 17 | E. Williams | 32, 68 | 1,500 00 | 1,050 00 |
| " 21 | N. L. Woodbury | 33, 69 | 1,500 00 | 1,050 00 |
| " 21 | George Warren | 34, 35 36, 37, 70, 71, 72, 73 | 6,000 00 | 4,200 00 |
| " 24 | E. L. Cummings | 38, 74 | 1,500 00 | 1,050 00 |
| " 26 | E. L. Cummings | 39, 40, 41 | 3,000 00 | 2,100 00 |
| " 26 | E. P. Neston | 42 | 1,000 00 | 700 00 |
| " 28 | B. C. Cummings | 43, 44, 45, 75, 76, 77 | 4,500 00 | 3,150 00 |
| " 28 | Wm. N. Wood | 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89 | 6,000 00 | 4,200 00 |
| " 30 | Chs. Q. Clapp | 90, 91, 92 | 1,500 00 | 1,050 00 |
| " 30 | John M. Wood | 93, 94, 95, 96, 97, 98 | 3,000 00 | 2,100 00 |
| " 30 | A. W. H. Clapp | 99, 100, 101, 102, 103, 104, 105, 106, 107, 108 | 5,000 00 | 3,500 00 |
| " 30 | E. L. Cummings | 109, 110, 111, 112, 113, 114 | 3,000 00 | 2,100 00 |
| Aug. 27 | Charles Q. Clapp | 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128 | 7,000 00 | 4,900 00 |
| | | | $61,500 00 | $4,350 00 |

(*Copy of Judgment.*)

September Term, A. D. 1855.

FIRST CIRCUIT,
*Maine District, ss:*

At a Circuit Court of the United States for the First Circuit begun and holden at Portland, within and for said Maine District, on the twenty-fourth (the twenty-third occurring on Sunday) day of September in the year of our Lord one thousand eighteen hundred and fifty-five—

Present: The Honorable Benjamin R. Curtis, Associate Justice of the Supreme Court, and the Honorable Ashur Ware, District Judge.

(Cont. 20.) John G. Myers, of the City of Boston, State of Massachusetts, and a citizen of said State of Massachusetts and of the United States, plaintiff, against Levi Morrell, of Westbrook, in the County of Cumberland, State of Maine, a citizen of said State and of the United States and in our said District of Maine, defendant—

In a plea of the case, for that whereas, by a certain agreement and contract in writing entered into by and between said plaintiff of the one part, and the York and Cumberland Railroad Corporation of the other part, in modification of a previous contract existing between said last-named parties, and at said Portland, on the sixth of February, in the year of our Lord one thousand eight hundred and fifty-one, it was agreed and covenanted by said parties to said contract, that said plaintiff should deliver to said defendant certain bonds with coupons annexed, issued by the said railroad corporation to said plaintiff, and amounting in all to the sum of sixty-one thousand seven hundred and thirty-two dollars, the same to be held by said Morrell on special deposit for the exclusive security and indemnity of the several and individual directors of said corporation against harm and loss, for and on account of their several and respective liabilities as indorsers for the debts of said company or corporation, and that said bonds and coupons should be subject to be used and sold in payment and discharge of the debts so indorsed as necessity should require, and on such terms as the majority of said indorsing directors shall deem expedient, but as fast and soon as said indorsed debts should be satisfied, either by sale of said bonds or *or* other means of said company, the excess of said bonds not needed for such indemnity, or an amount equal to any sum that shall be so satisfied out of any other resources of said company, should be issued anew and redelivered to said Myers, or his assigns, by said Morrell, in payment of work and material then to be furnished by said Myers to said company in completion of so much of said Myers' said prior existing contract with said company as pertained to the first division of said company's road, specially described in said prior existing contract, as the same should or would become

due said Myers in case said modified contract had not been made; and in pursuance and fulfilment of said last-named contract with said company, said Myers did, at said Portland, deliver to said Morrell on the seventeenth day of February, A. D. 1851, and last aforesaid, sixty-one thousand five hundred dollars of the said bonds and coupons so issued to the plaintiff by said company, all being then and there of the value of sixty-one thousand five hundred dollars, and in consideration thereof, the said Morrell then and there, to wit, at Portland aforesaid, on said seventeenth day of February, A. D. 1851, by him memorandum or agreement in writing by him signed, acknowledged the receipt of said bonds and coupons of the value aforesaid, and amounting to the sum of sixty-one thousand five hundred dollars, of said plaintiff, and then and there in said writing promised the same should be accounted for and for the purposes specified in said Myers' aforesaid agreement and contract with said company, dated as aforesaid, on the sixth day of February, A. D. 1851. Yet the said Morrell, not regarding his said promise, never accounted to the plaintiff for and for the purposes aforesaid, the said bonds and coupons, though often requested, but neglects and refuses so to do, and the plaintiff avers, that said bonds and coupons never became necessary for the indemnity of said indorsing directors, and were never used and sold by said Morrell in payment and discharge of the debts of said company indorsed by said directors in the manner and on the terms provided by the agreements and contracts before mentioned, but the said bonds, to wit, to the amount of twelve thousand dollars, and coupons thereto pertaining, all of the value of fifteen thousand dollars, became due and returnable by the said Morrell to the plaintiff, and in consideration thereof the said Morrell became liable and promised to pay the same to the plaintiff on demand, yet wholly neglects and refuses so to do, although thereunto requested.

Also for that said defendant at said Portland, on the seventeenth day of February, A. D. 1851, in consideration of having received of the plaintiff sixty-one thousand five hundred dollars in the bonds of the York and Cumberland Railroad Company, secured by mortgaged with coupons for interest pertaining thereto, then being of the value of sixty-five thousand and five hundred dollars, then and there promised the plaintiff to render him an account thereof on demand, yet, though requested, hath refused so to do.

Also for that the said defendant being indebted to the plaintiff in the sum of fifteen thousand dollars, at said Portland, on the day of the purchase of this writ, for so much money before that time had and received by the said Morrell to the plaintiff's use, in consideration thereof, then and there promised the plaintiff to pay him the same sum on demand.

Also for that said defendant at said Portland on the day last aforesaid, being indebted to the plaintiff in the sum of fifteen thousand dollars for so much money before that time lent and accommo-

dated by the plaintiff to the defendant at his request, then and there promised to pay the plaintiff the said sum on demand.

Yet though requested, said Morrell has not paid said sum, to the damage of the said plaintiff, as he says, the sum of thirty thousand dollars.

This action was entered at April term in the year of our Lord one thousand eight hundred and fifty-five, when, on motion of the defendant, the plaintiff was required to furnish security, to the satisfaction of the court, for such costs as the defendant may recover against him, the same to be furnished within thirty days from the first days of said April term, which was complied with. The defendant asked, and had leave of the court to plead double. And the action was postponed to an adjourned session of said April term held at said Portland, within and for said Maine District, on the second day of July then next ensuing, and was thence continued to the present term.

And now the said Morrell comes and defends the wrong and injury when and where, &c., and for plea says, that he never promised the said Myers in manner and form as the said Myers has declared against him, and thereof puts himself upon the country.

By CLIFFORD & WELLS, his Att'ys.

And the plaintiff likewise,

By the Att'ys, DEBLOIS & SMITH.

And said Morrell makes the following brief statement in said case, that he expects to prove a former recovery in said case, that said Myers commenced an action against said Morrell returnable at the Circuit Court of the United States, in the District of Massachusetts, at the May term, 1852, for the same cause of action as is alleged in the present suit, and after several continuances, a verdict and judgment were rendered by said court in favor of said Morrell in said action.

CLIFFORD & WELLS,
*Att'ys to said Morrell.*

And thereupon said cause is put to a jury duly impanelled and sworn, and after a full hearing of the evidence produced as well on behalf of the defendant as of the plaintiff, and the arguments of the respective counsel thereupon (and the said Morrell having then and there, before said cause was finally submitted to the jury, excepted to the opinions of the court, and its construction of said contracts, rulings, determinations, and omissions to instruct the jury as prayed for in his requests, whose exceptions in the premises are allowed, signed, and sealed by the court, and then and there placed on file), the cause is by the court committed to said jury, who, after mature deliberation thereon had, return their verdict, "that the defendant promised in manner and form as the plaintiff has set forth in his